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2013/0081 (COD)

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**OUTCOME OF PROCEEDINGS**

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| From: | Working Party on Integration, Migration and Expulsion |
| On: | 29 November 2013 |
| To: | Delegations |
| No. prev. doc.: | 16142/13 MIGR 127 RECH 534 EDUC 434 CODEC 2559 |
| No. Cion doc.: | 7869/13 MIGR 27 RECH 87 EDUC 97 CODEC 669 |
| Subject: | Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au pairing [Recast] |

At its meeting held on the 29th of November, the Working Party on Integration, Migration and Expulsion had a exchange of views on the Presidency's compromise suggestions.

The results of the discussions are set out in the Annex to this document, with delegations comments in the footnotes.

New text to the Commission proposal is indicated by underlining the insertion and including it within Council tags: ➲_➲; deleted text is indicated within underlined square brackets as follows: ➲[...]➲.

**ANNEX**

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| ↓ 2004/114/EC, 2005/71/EC |
| (adapted) |
| ⇨ new |

2013/0081 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on the conditions of ~~admission~~ ⇨ entry and residence ⇦ of third-country nationals for the purposes of ⌦ research, ⌫ studies, pupil exchange, ⇨ remunerated and ⇦ unremunerated training ~~or~~, voluntary service ⇨ and au pairing ⇦** [1]

[1] **AT, NL, CZ, HU, PL, PT, LV, SI, EE, SE, BE, BG, LU, IT, SK, FI, EL, LT, RO, ES, FR**: general scrutiny reservations. **AT, CZ, HU, PL**: parliamentary scrutiny reservations. **SE, IT, SK, LT**: linguistic reservations.
Delegations' position concerning the groups included in this proposal:
- **Researchers**:
* Delegations are in favour of or do not object to this group being mandatory.
- **Students**:
* Delegations are in favour of or do not object to this group being mandatory.
- **School pupils**:
* Reservation against becoming mandatory: **PL, DE, BE, NL, EL.**
* Scrutiny reservation: **FI, IT, AT, ES.**
- **Unremunerated trainees**:
* Reservation against becoming mandatory: **NL, LV, EL, AT, DE.**
* Scrutiny reservation: **ES, BE, PT, SE, FI, CY.**
- **Remunerated trainees**:
* Reservation against inclusion: **DE, RO, PT, AT, SI, EL, CZ, HU, PL, CY.**
* Support inclusion: **LU, IT.**
* Scrutiny reservation: **FR, FI, LV, EE, BE, SK, LT, ES, SE.**
- **Volunteers**:
* Reservation against becoming mandatory: **BE, NL, DE, LV, FI, AT, ES, CY.**
* Scrutiny reservation: **FR, IT.**
* Support becoming mandatory: **EL**.
- **Au-pairs**:
* Reservation against inclusion: **DE, HU, NL, LV, FI, SI, PT, AT, EL, ES, CZ.**
* Support inclusion: **LU, IT, FR.**
* Support becoming optional: **BE, NL.**
* Scrutiny reservation: **RO, EE, PL, SK, CY.**

~~on a specific procedure for admitting third-country nationals for the purposes of scientific research~~

**[RECAST][2]**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty ⌦ on the Functioning of the European Union ⌫ ~~establishing the European Community~~, and in particular point~~s~~ ~~(3)~~ (a) ⌦ and (b) ⌫ ~~(4)(b)of the first subparagraph~~ of Article ~~63~~ ⌦ 79(2) ⌫ thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the Opinion of the European Economic and Social Committee,

Having regard to the Opinion of the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

Whereas:[3]

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2 **AT, CZ** questioned why to put so very different groups together in one single legislative act, both preferring to keep two different directives like it is currently the case. Furthermore, **CZ** considered that a new directive is not necessary to increase attractiveness of employment in fields that require higher education and research. Alternatively, **CZ** was of the opinion that this proposal should deal only with stays on the basis of residence permits and not on the basis of long-stay visas, which remain a national competence. **AT** also had doubts about whether Article 79 of the TFEU is a sufficient legal base or whether Article 153 should not be a better legal base. **Council's Legal Service** replied that Article 79 provides a sufficient and appropriate legal base and that this approach has been followed regarding ICT and SW Directive proposals. **AT, DE, CY** stated that Member States should retain control over their labour markets.

3 **ES** suggested the inclusion of a new recital, covering cases in which Member States conclude agreements that do not fall within the scope of this proposal.

⇩ new

➲ Council

(1) A number of amendements are to be made to Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service[4] and Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research[5]. In the interests of clarity, those Directives should be recast.

(2) This Directive should respond to the need identified in the implementation reports of the two Directives[6] to remedy the identified weaknesses, and to offer a coherent legal framework for different groups coming to the Union from third countries. It should therefore simplify and streamline the existing provisions for the different groups in a single instrument. Despite differences between the groups covered by this Directive, they also share a number of characteristics which makes it possible to address them through a common legal framework at Union level.

(3) This Directive should contribute to the Stockholm Programme's aim to approximate national legislation on the conditions for entry and residence of third-country nationals. Immigration from outside the Union is one source of highly skilled people, and in particular students and researchers are increasingly sought after. They play an important role to form the Union's key asset – human capital - in ensuring smart, sustainable and inclusive growth, and therefore contribute to the achievement of the objectives of the Europe 2020 Strategy.

4 OJ L 375, 23.12.2004, p. 12.
5 OJ L 289, 3.11.2005, p. 15.
6 COM(2011) 587 final and COM(2011) 901 final

(4) The ➲ […] ➲ weaknesses ➲ highlighted in the implementation reports of the two Directives concern mainly admission conditions, rights, procedural safeguards, students' access to the labour market during studies, intra-Union mobility provisions as well as a lack of harmonization, as coverage of some groups, such as volunteers, school pupils and unremunerated trainees was left optional to Member States. Subsequent wider consultations have also pointed to the need for better job-seeking possibilities for researchers and students and better protection of au-pairs and remunerated trainees which are not covered by the current instruments.[7]

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↓ 2004/114/EC recital 1

(5) For the gradual establishment of an area of freedom, security and justice, the Treaty provides for measures to be adopted in the fields of asylum, immigration and the protection of the rights of third-country nationals.

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↓ 2004/114/EC recital 2 (adapted)

~~The Treaty provides that the Council is to adopt measures on immigration policy relating to conditions of entry and residence, and standards on procedures for the issue by Member States of long-term visas and residence permits.~~

[7] **ES**: scrutiny reservation. **AT, NL** considered the use of the word "weaknesses" inappropriate due to the fact that delegations want some of the categories, mandatory, in this proposal to be made optional. **AT** suggested to delete the recital.

↓ 2004/114/EC recital 3 (adapted)

~~At its special meeting at Tampere on 15 and 16 October 1999, the European Council acknowledged the need for approximation of national legislation on the conditions for admission and residence of third-country nationals and asked the Council to rapidly adopt decisions on the basis of proposals by the Commission.~~

⇩ new

(6) This Directive should also aim at fostering people-to-people contacts and mobility, as important elements of the Union's external policy, notably vis-à-vis the countries of the European Neighbourhood Policy or the Union's strategic partners. It should allow for a better contribution to the Global Approach to Migration and Mobility and its Mobility Partnerships which offer a concrete framework for dialogue and cooperation between the Member States and third countries, including in facilitating and organizing legal migration.

↓ 2004/114/EC recital 6 (adapted)

~~One of the objectives of Community action in the field of education is to promote Europe as a whole as a world centre of excellence for studies and vocational training. Promoting the mobility of third-country nationals to the Community for the purpose of studies is a key factor in that strategy. The approximation of the Member States' national legislation on conditions of entry and residence is part of this.~~

↓ 2004/114/EC recital 7 (adapted)
⇨ new

(7) Migration for the purposes set out in this Directive ~~is by definition temporary and does not depend on the labour-market situation in the host country,~~.[8] ⇨ should promote the generation and acquisition of knowledge and skills. ⇦ ⌦ It ⌫ constitutes a form of mutual enrichment for the migrants concerned, their country of origin and the host Member State and helps to promote better familiarity among cultures.

⇩ new

(8) This Directive should promote the Union as an attractive location for research and innovation and advance the Union in the global competition for talent. Opening the Union up to third-country nationals who may be admitted for the purposes of research is also part of the Innovation Union flagship initiative. Creating an open labour market for Union researchers and for researchers from third countries was also affirmed as a key aim of the European Research Area (ERA), a unified area, in which researchers, scientific knowldedge and technology circulate freely.

[8] **CY** did not agree with this deletion.

↓ 2005/71/EC recital 5 (adapted)

~~This Directive is intended to contribute to achieving these goals by fostering the admission and mobility for research purposes of third-country nationals for stays of more than three months, in order to make the Community more attractive to researchers from around the world and to boost its position as an international centre for research.~~

↓ 2004/114/EC recital 9 (adapted)

~~The new Community rules are based on definitions of student, trainee, educational establishment and volunteer already in use in Community law, in particular in the various Community programmes to promote the mobility of the relevant persons (Socrates, European Voluntary Service etc.).~~

↓ 2004/114/EC recital 11

~~Third-country nationals who fall into the categories of unremunerated trainees and volunteers and who are considered, by virtue of their activities or the kind of compensation or remuneration received, as workers under national legislation are not covered by this Directive. The admission of third-country nationals who intend to carry out specialisation studies in the field of medicine should be determined by the Member States.~~

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| ↓ 2005/71/EC recitals 11, 13 and 14 (adapted)<br>⇨ new<br>➲ Council |

(9) It is appropriate to facilitate the admission of researchers ~~by establishing~~ ⇨ through ⇦ an admission procedure which does not depend on their legal relationship with the host research organisation and by no longer requiring a work permit in addition to a residence permit ⇨ or a long-stay visa ⇦ . ~~Member States could apply similar rules for third-country nationals requesting admission for the purposes of teaching in a higher education establishment in accordance with national legislation or administrative practice, in the context of a research project.~~ ~~The~~ ⌦ This ⌫ ~~specific admission~~ procedure ~~for researchers~~ should be based on collaboration between ~~the~~ research organisations and the immigration authorities in the Member States. It should give the former a key role in the admission procedure with a view to facilitating and speeding up the entry and residence of third-country researchers in the ~~Community~~ ⌦ Union ⌫ while preserving Member States' prerogatives with respect to immigration ~~policing~~ ⌦ policy ⌫. Research organisations approved in advance by the Member States should be able to sign a hosting agreement[9] with a third-country national for the purposes of carrying out a research ➲ […] ➲ activity[10] ➲ . Member States should issue ~~a residence permit~~ ⇨ an authorisation ⇦ on the basis of the hosting agreement if the conditions for entry and residence are met.[11]

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9 **ES** suggested an addition allowing researchers to carry out their research activity not only on the basis of a "hosting agreement" but also on the basis of a "*employment contract*".

10 **AT** preferred "research project", since it is narrower, in order to limit abuse as much as possible.

11 **AT, FI, ES**: scrutiny reservation.

➲ (9a) Considering the role agents could play in the recruitment of au-pairs for the purpose of this Directive, it is important to provide Member States for an opportunity to regulate this role. Member States should also have the possibility to apply, in addition to the general procedures of admission of students, school pupils, remunerated or unremunerated trainees or volunteers, a fast track procedure, when these categories of third-country nationals are recruited by an approved agent or an approved host entity for the purposes of entry to the first Member State ➲[12]

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| ↓ 2005/71/EC recital 9 (adapted)<br>➲ Council |
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(10) As the effort to be made to achieve the ~~said 3 %~~ target ⌦ of investing 3 % of GDP in research ⌫ largely concerns the private sector, which ➲ […] ➲ ➲ should [13]➲ therefore recruit more researchers in the years to come, the research organisations ~~potentially eligible~~ ⌦ that can be approved ⌫ under this Directive ⌦ ➲ […] ➲ ➲ could ➲ ⌫ belong to either the public or private sectors.

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12 **CZ, DE, IT, NL, AT, FI**: scrutiny reservation. **FR** pointed out that where these agents are located, within the EU or elsewhere in third countries, is an important question. It would prove difficult to approve this agents if there were located in a third country. **CZ** wanted agents to be also in charge of recruiting remunerated trainees. **IT** proposed to further reflect on this and to have a discussion among delegations on the accreditation of the agents in the territory concerned. **NL** pointed out that **PRES** has not taken **NL**'s proposal in its integrity, specially concerning how Article 6a has been drafted. ES presented a reservation on the application of the fast-track procedure. **CION** introduced a reservation on this recital and other provisions dealing with the notion of agent. **CION** stated that they can consider accepting agents to be the only channel for au-pairs entering the EU, but it is against being the only channel for the other categories.

13 **AT**: scrutiny reservation. **AT, DE** did not like the use of the term"should" here. They maintanined that if "should" is going to be kept, then the wording "*where appropriate*" need to be added.

🡻 2005/71/EC recital 15 (adapted)
⇨ new

(11) In order to make the ~~Community~~ ⌦ Union ⌫ more attractive ~~to~~ ⌦ for ⌫ third-country ⌦ national ⌫ researchers, ⇨ family members of researchers, as defined in Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification[14], ⇦ ~~they should be granted, during their stay, equal social and economic rights with nationals of the host Member State in a number of areas and the possibility to teach in higher education establishments~~ ⇨ should be admitted with them. They should benefit from intra- Union mobility provisions and they should also have access to the labour market[15] ⇦.

⇩ new
➲ Council

(12) Where appropriate, Member States should be encouraged to treat ➲ […] ➲ ➲ doctoral[16] ➲ candidates as researchers.

14 OJ L 251, 3.10.2003, p. 12.

15 **EL, AT, SK**: scrutiny reservation concerning right of researcher's family members to have access to the labour market. **CY** preferred the application of the provisions of national law regarding family reunification.

16 **ES, AT**: scrutiny reservation. **AT** was of the opinion that "doctoral candidates" is better than the original "PhD candidates", but since rules are different in Member States this could lead to confusion. **SE** stated that the term "*doctoral students*" is clearer and better than "doctoral candidates" as suggested by PRES.

↓ 2005/71/EC recital 6 (adapted)

(13) Implementation of this Directive should not encourage a brain drain from emerging or developing countries. ~~Back-up~~Measures to support researchers' reintegration into their countries of origin ~~as well as the movement of researchers~~ should be taken in partnership with the countries of origin with a view to establishing a comprehensive migration policy.

⇩ new

(14) In order to promote Europe as a whole as a world centre of excellence for studies and training, the conditions for entry and residence of those who wish to come to the Union for these purposes should be improved. This is in line with the objectives of the Agenda for the modernisation of Europe's higher education systems[17], in particular within the context of the internationalisation of European higher education. The approximation of the Member States' relevant national legislation is part of this endeavour.

[17] COM(2011) 567 final

⇩ new

➲ Council

(15) The extension and deepening of the Bologna process launched through the Bologna Declaration[18] has led to the progressive convergence of higher education systems in participating countries but also beyond them. This is because national authorities have supported the mobility of students and ➲ […] ⊂ ➲ researchers[19] ⊂ , and higher education ➲ […] ⊂ ➲ institutions[20] ⊂ have integrated it in their curricula. This needs to be reflected through improved intra-Union mobility provisions for students. Making European higher education attractive and competitive is one of the objectives of the Bologna declaration. The Bologna process led to the establishment of the European Higher Education Area. Streamlining the European higher education sector has made it more attractive for students who are third-country nationals to study in Europe.[21]

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[18] Joint declaration of the European Ministers of Education of 19 June 1999

[19] **AT**: scrutiny reservation. **FR** preferred the original term "*academic staff*" over "researchers" as **PRES** had suggested. According to **FR**, "researchers" is a term that is more restrictive than "academic staff" and **FR** preferred that the recital gives at least the possibility for administrative staff to also enjoy the mobility rules. **DE, AT** agreed in principle with the change.

[20] **AT, DE, ES**: scrutiny reservation. **FR** welcomed this insertion.

[21] **DE** suggested the following changes to this recital in order to describe the impact of the Bologna Process in a more accurate manner:
"*The extension and deepening of the Bologna process launched through the Bologna Declaration Joint declaration of the European Ministers of Education of 19 June 1999 has led to more comparable, compatible and coherent systems of higher education ~~the progressive convergence of higher education systems~~ in participating countries but also beyond them. This is because national authorities have supported the mobility of students and researchers, and higher education institutions have integrated it in their curricula. This needs to be reflected through improved intra-Union mobility provisions for students. Making European higher education attractive and competitive is one of the objectives of the Bologna declaration. The Bologna process led to the establishment of the European Higher Education Area. Its three-cycle structure with easily readable programmes and degrees as well as the introduction of qualifications frameworks ~~Streamlining the European higher education sector~~ has made it more attractive for students who are third-country nationals to study in Europe.*"

↓ 2004/114/EC recital 10

(16) The duration and other conditions of preparatory courses for students covered by this Directive should be determined by Member States in accordance with their national legislation.

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↓ 2004/114/EC recital 12
➲ Council

(17) Evidence of acceptance of a student by a ➲ […] ➲ higher education ➲ institution[22] ➲ could include, among other possibilities, a letter or certificate confirming his/her enrolment.

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↓ 2004/114/EC recital 13
⇨ new

(18) Fellowships ~~may~~ ⇨ should ⇦ be taken into account in assessing the availability of sufficient resources.

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[22] **AT**: scrutiny reservation.

⇩ new

➲ Council

(19) [➲ […] ⊂ Member States ➲ should have ⊂ ➲ […] ⊂ discretion on whether or not to apply ➲ this ⊂ Directive ➲ […] ⊂ to school pupils, volunteers ➲ […] ⊂ ➲ , remunerated or ⊂ unremunerated trainees ➲ and au-pairs ⊂ , ➲ […] ⊂ in order to facilitate their entry and residence and ensure their rights. ➲ […] ⊂ ] [23]

(20) ➲ […] ⊂[24]

(21) ➲ […] ⊂ ➲ As far as au-pairs are concerned, Member States could decide to apply this Directive ⊂ to address their specific needs as a particularly vulnerable group. This Directive should foresee conditions to be fulfilled by both the au-pair and the host family, in particular as regards the agreement between them which should include elements such as the pocket money to be received[25] [26].

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23 **ES, AT, CZ**: scrutiny reservation. **CY** proposed to clarify in this recital the way in which the Directive will be implemented to the groups mentioned.

24 **HU** pointed out that the deleted recital mentioned third-counry nationals that come to work in the EU and that previous discussions took place about who to consider a worker. **HU** was of the opinion that with this recital deleted there is a need to insert a new recital in which the issue of when one is to be considered a worker is clarified. **PRES** clarified that the recital was deleted bcause it made refeence to the ICT Directive.

25 Council of Europe European Agreement on "au pair" Placement, Article 8

26 **ES, AT, CZ**: scrutiny reservation. **AT** proposed to delete this recital.

(22) Once all the general and specific conditions for admission are fulfilled, Member States should issue an authorisation, i.e. a long stay visa ➲ […] ➲ or ➲ a ➲ residence permit, within specified time limits. If a Member State issues a residence permit on its territory only and all the conditions of this Directive relating to admission are fulfilled, the Member State should grant the third-country national concerned the requisite visa ➲ or equivalent permit for entry ➲ .[27]

(23) Authorisations should mention the status of the third-country national concerned ➲ […] ➲ . Member States may indicate additional information ➲ as well as respective EU, bilateral or multilateral programmes that comprise mobility measures[28] ➲ in paper format or electronically, provided this does not amount to additional conditions.

(24) The different periods of duration regarding authorisations under this Directive should reflect the specific nature of the stay of each group.

(25) Member States may charge applicants for ➲ […] ➲ ➲ handling[29] ➲ applications for authorisations. The fees should be proportionate to the purpose of the stay.

(26) The rights granted to third-country nationals under this Directive should not depend on whether the authorisation is in the form of a long stay visa or a residence permit.

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27 **PRES** clarified, following a question from **FR**, that the reason of the addition in this recital is that there are Member States which are not in Schengen that do not produce visas. **DE** requested to make clear in this recital that the "equivalent permit for entry" applies only to Member States that are not part of Schengen. **AT** requested this recital to be put in line with Article 5(2) of this proposal.

28 **AT, HU, ES**: scrutiny reservation. **AT** proposed the following wording: "*Member States may indicate additional information including respective information on EU, bilateral or multilateral programmes […]*".

29 **AT** asked what was the background for the inclusion of the new wording "handling". **PRES** answered that this term is the one used in other directives, so **PRES** wanted to align this proposal with those directives.

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| 🡻 2004/114/EC recital 8<br>➲ Council |

(27) ➲ […] ➲[30]

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| 🡻 2004/114/EC recital 14<br>(adapted)<br>⇨ new<br>➲ Council |

(28) ➲ It should be possible to refuse ➲ admission ➲ […] ➲ on duly justified grounds. In particular, ➲ […] ➲ ➲ a Member State should be able to refuse admission if it considers ➲ , based on an assessment of the facts, ⇨ in an individual case, ⇦ that the third-country national concerned is a potential threat to public policy ~~or~~, public security ⇨ or public health ⇦ . ~~The notion of public policy may cover a conviction for committing a serious crime. In this context it has to be noted that the notions of public policy and public security also cover cases in which a third-country national belongs or has belonged to an association which supports terrorism, supports or has supported such an association, or has or has had extremist aspirations.~~[31]

[30] **HU, AT**: scrutiny reservation.

[31] **FR** pointed out that it would be useful to clarify in this recital that public policy also covers the "*threat to the national scientific, technical and logistic potential*".

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| ↓ 2004/114/EC recital 15<br>(adapted) |

(29) In case of doubts concerning the grounds of the application ~~of~~ ⌦ for ⌫ admission, Member States should be able to require all the evidence necessary to assess its coherence, in particular on the basis of the applicant's ~~proposed~~ ⌦ intended ⌫ studies ⌦ or training ⌫ , in order to fight against abuse and misuse of the procedure set out in this Directive.

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| ⇩ new<br>➲ Council |

(30) National authorities should inform third-country nationals who apply for admission to the Member States under this Directive of a decision on the application. They should do so in writing as soon as possible and, at the latest within ➲ […] ➲ ➲ the period specified in this Directive ➲ .

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| ↓ 2004/114/EC recital 16<br>(adapted)<br>⇨ new<br>➲ Council |

(31) The ⌦ intra-Union ⌫ mobility of ~~students who are~~ third-country ⌦ national researchers, students [and remunerated trainees[32]] ⌫ ~~studying in several Member States~~ should be facilitated~~,~~ ~~as must the admission of third-country nationals participating in Community programmes to promote mobility within and towards the Community for the purposes set out in this Directive~~. ⇨ For researchers, this Directive should improve the rules relating to the period for which the authorisation granted by the first Member State should cover stays in a second Member State without requiring a new hosting agreement ➲ in case of short-term mobility ➲ . Improvements should be made regarding the situation of students, [and the new group of remunerated trainees], by allowing them to stay in a second Member State for periods lasting ➲ […] ➲ ➲ 90 days in a 180-day period ➲ , provided that they fulfil the ➲ […] ➲ conditions laid down in this Directive. ➲ […] ➲ ⇦[33]

[32] **RO, PL, DE, AT, ES, EL**: reservation against the extension to remunerated trainees.

[33] **FR, PL, DE, BE, ES**: scrutiny reservation on the mobility model. **DE, ES, EL** stated that they preferred the mobility model to be agreed upon first for ICT proposal and then further discuss how to apply such mobility model to the present proposal. **CION** stated that in principle it agrees to discuss this mobility model, but pointed out that the ICTs provisions will have to be adjusted to the specific needs of this proposal.

⇩ new

➲ Council

(32) Union immigration rules and ➲ […] ⊂ ➲ ➲ EU, ⊂ bilateral and multilateral ⊂ programmes ➲ […] ⊂ ➲ that comprise ⊂ mobility measures should complement each other more. ➲ […] ⊂ Researchers and students covered by such ➲ […] ⊂ programmes should be entitled to ➲ […] ⊂ ➲ receive authorisations covering the whole duration of their stay in the Member States concerned, without prejudice to mobility rules, as provided for in this Directive. ⊂[34] ➲ […] ⊂

[34] **PL, DE, AT, ES** : scrutiny reservation. **PL, DE, AT** were of the opinion that, in relation to Article 16(4), Member States should decide the maximum period of stay for students and researchers and this proposal should not deal with this. They also agreed that this proposal should not cover programmes with mobility measures established among Member States. These provisions seem to state that Member States have to use mobility rules agreed upon by other Member States programmes, bilateral or multilateral.

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| ↓ 2004/114/EC recital 18<br>(adapted)<br>⇨ new<br>➲ Council |

(33) In order to allow ⌦ ➲ […] ➲ ⌫ students ~~who are third-country nationals~~ to ⇨ ➲ […] ➲ ⇦ ➲ gain practical experience and, in addition, to ➲ cover part of the cost of their studies, they should be given ⇨ increased ⇦ access to the labour market under the conditions set out in this Directive⇨ , meaning a ➲ […] ➲ ⇦ ➲ certain minimum amount of hours as specified in this Directive ➲. The principle of access for students to the labour market ~~under the conditions set out in this Directive~~ should be a general rule. However, ➲ […] ➲ Member States should be able to take into account the situation of their national labour markets ⇨ ➲ […] ➲ ⇦ .[35]

[35] **ES**: scrutiny reservation. **CZ** wondered whether it is necessary to estipulate a minimum number of hours of work per week in this proposal since this raises the question on how to consider the work of students with a duration lower than that minimum. **FR** pointed out that it was in favour of establishing a "*maximum number of hours*" of work per week.

⇩ new

➲ Council

(34) As part of the drive to ensure a well-qualified workforce for the future, Member States should[36] allow students who graduate in the Union to remain on their territory with the intention to identify work opportunities or to set up a business for ➲ […] ➲ ➲ the period specified in this Directive ➲ after expiry of the initial authorisation. They should[37] also allow researchers to do so upon completion of their research ➲ […] ➲ ➲ activity ➲ as defined in the hosting agreement. This should not amount to an automatic right of access to the labour market or to set up a business.They may be requested to provide evidence in accordance with ➲ […] ➲ ➲ the requirements of this Directive ➲ [38]

➲ (34a) This Directive does not aim to harmonise national laws or practices of Member States related to treatment of third-country nationals covered by this Directive with respect to worker's status. Therefore provisions of this Directive related to worker's status should be applied to the third-country nationals only in case they are or intend to be in an employment relationship with an employer established in the Member State concerned[39]

36 **CY** proposed to replace "should" with "*could*".

37 **CY** proposed to replace "should" with "*could*".

38 **EL, ES, AT**: scrutiny reservation.

39 **AT, FI, DE, IT**: scrutiny reservation. **PL** pointed out that changes in this recital, and in Article 21(1), does not clarify too much as far as worker's status is concerned. **ES** presented a reservation since it does not agree with the recognition of equal treatment with nationals of third countries. **AT** requested clarification about whether cross-border cases are included in this recital and expressed concerns about whether temporary agencies are covered. **FI** wondered whether the second sentence is necessary and whether it should not be deleted. **IT** pointed out that it is difficult to determine "intention" as this recital requests: "[…] or intend to be in an employment relationship […]". **CION** also presented a scrutiny reservation on the drafting of this recital.

(35) The provisions of this Directive are without prejudice to the competence of the Member States to regulate the volumes of admission of third-country nationals for the purpose of work.

(36) To make the Union more attractive for third-country national researchers, students, pupils, ➲ remunerated or unremunerated ➲ trainees, volunteers and au pairs, it is important to ensure their fair treatment in accordance with Article 79 of the Treaty. ➲ […] ➲ ➲ Students should continue to be covered by ➲ Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State[40] ➲ , with the possible exceptions that apply under that Directive ➲ . More favourable rights to equal treatment with nationals of the host Member State as regards branches of social security as defined in Regulation No 883/2004 on the coordination of social security schemes should be maintained for ➲ […] ➲ researchers, in addition to the rights granted under Directive 2011/98/EU. Currently the latter foresees a possibility for Member States to limit equal treatment with regard to branches of social security, including family benefits, and this possibility of limitation could affect researchers. ➲ Equal treatment under Directive 2011/98/EU ➲ , with the possible exceptions that apply under that Directive, ➲ should also apply to other categories of third-country nationals falling under the scope of this Directive, when they are authorised to work under Union or national law. ➲ In addition, independently on whether Union or national law of the host Member State gives ➲ […] ➲ school pupils, volunteers, unremunerated ➲ and remunerated ➲ trainees and au-pairs access to the labour market, they should enjoy equal treatment rights with nationals of the host Member State as regards access to goods and services and the supply of goods and services made available to the public.[41]

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[40] OJ L 343, 23.12.2011, p. 1.

[41] **DE, AT, FR, SI, SK, PL, IT, ES**: scrutiny reservation. **CZ** only supports social rights equal treatment for researchers, not the other groups. **ES** was not in favour of the recognition of equal treatment for social rights of third-country nationals. **CION** did not agree with recouping rights already established in the current Researchers Directive. According to **CION** this recital is in line with the existent Researchers Directive and Single Permit Directive.

↓ 2004/114/EC recital 23

(37) This Directive should not in any circumstances affect the application of Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals[42].

↓ 2005/71/EC recital 22 (adapted)

~~This Directive should not affect in any circumstances the application of Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals[43].~~

↓ 2004/114/EC recital 4 (adapted)
⇨ new

(38) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union~~.~~ ⇨, as referred to in Article 6 of the Treaty on European Union ⇦.

↓ 2005/71/EC recital 25 (adapted)

~~This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.~~

42 OJ L 157, 15.6.2002, p. 1.

43 ~~OJ L 157, 15.6.2002, p. 1.~~

↓ 2004/114/EC recital 5
➲ Council

(39) The Member States should give effect to the provisions of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinions, membership of a national minority, property, birth, disability, age or sexual orientation.[44]

➲ (39a) When laid down in national law and in accordance with the principle of non-discrimination as set out in Article 10 of the Treaty on the Functioning of the European Union, Member States are allowed to apply more favourable treatment to nationals of specific third countries when compared to the nationals of other third countries when implementing the optional provisions of this Directive. ➲[45]

↓ 2005/71/EC recital 24 (adapted)

~~Member States should give effect to the provisions of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disabilities, age or sexual orientation.~~

[44] **NL** pointed out that in its opinion the words "property" and "age" could give rise to legal problems, so it suggested to delete such terms from the recital.

[45] **AT**: scrutiny reservation. **CION** expressed its reservation on this recital being included in the proposal. It had doubts that this recital is needed in this proposal even if there is a similar one in the Seasonal Workers Directive proposal. **AT** agreed with **CION** on this.

⇩ new

(40) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.[46]

[46] **LV** considered premature the inclusion of the statement that the "transmission of such documents to be justified" for this Directive, since the assessment has not been carried out yet.

↓ 2004/114/EC recital 24
(adapted)
⇨ new

(41) Since the objective of this Directive, namely to determine the conditions of ~~admission~~ ⌦ entry and residence ⌫ of third-country nationals for the purposes of ⌦ research ⌫ study, pupil exchange, unremunerated ⇨ or remunerated ⇦ training, voluntary service ⇨ or au pairing ⇦, cannot be sufficiently achieved by the Member States and can, by reason of its scale or effects, be better achieved at ~~Community~~ ⌦ Union ⌫ level, the ~~Community~~ ⌦ Union ⌫ may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that article, this Directive does not go beyond what is necessary to achieve that objective.[47]

↓ 2005/71/EC recital 23 (adapted)

~~The objectives of this Directive, namely the introduction of a special admission procedure and the adoption of conditions of entry and residence applicable to third-country nationals for stays of more than three months in the Member States for the purposes of conducting a research project under a hosting agreement with a research organisation, cannot be sufficiently achieved by the Member States, especially as regards ensuring mobility between Member States, and can therefore be better achieved by the Community. The Community is therefore entitled to take measures in accordance with the subsidiarity principle laid down in Article 5 of the Treaty. In accordance with the principle of proportionality set out in that article, this Directive does not go beyond what is necessary to achieve those objectives.~~

47 **ES, AT**: scrutiny reservation. **DE** was of the opinion that this recital does not properly reflect the position that some categories should remain optional, and therefore it should be changed accordingly. **CZ** stated that it is up to the Member States to decide to include some of these categories and **CZ** wanted this recital to better reflect this. **AT** agreed with **DE, CZ**.

↓ 2004/114/EC recital 22
(adapted)
➲ Council

(42) Each Member State should ensure that the fullest possible set of regularly updated information is made available to the general public, notably on the Internet, ⌦ about the research organisations, approved under this Directive, with which researchers could conclude a hosting agreement, and on the conditions and procedures for entry into and residence on its territory for the purposes of carrying out research, as adopted under this Directive as well ⌫ as ~~regards~~ ⌦ information about ⌫ the establishments ➲ and institutions ➲ defined in this Directive, ➲ the ➲ courses of study ➲ that they provide and ➲ to which third-country nationals may be admitted and the conditions and procedures for ➲ […] ➲ ➲ admission to ➲ its territory for those purposes.[48]

↓ 2005/71/EC recital 10 (adapted)

~~Each Member State should ensure that the most comprehensive information possible, regularly kept up to date, is made publicly available, via the Internet in particular, on the research organisations, approved under this Directive, with which researchers could conclude a hosting agreement, and on the conditions and procedures for entry and residence on its territory for the purposes of carrying out research, as adopted under this Directive.~~

[48] **AT**: scrutiny reservation.

↓ 2005/71/EC recital 28 (adapted)
➲ Council

(43) ➲ In accordance with Articles 1, 2 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty of the European Union and the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, the United Kingdom and Ireland are not taking part in the adoption of this Directive and are not bound by it or subject to its application. ➲ […] ➲[49]

↓ 2005/71/EC recital 29 (adapted)

(44) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty ~~establishing~~ ⌦ on the Functioning of ⌫ the European ⌦ Union ⌫ ~~Community~~, Denmark does not take part in the adoption of this Directive, and is not bound by it or subject to its application.

↓ 2004/114/EC recital 17 (adapted)

~~In order to allow initial entry into their territory, Member States should be able to issue in a timely manner a residence permit or, if they issue residence permits exclusively on their territory, a visa.~~

[49] Please note that the amendment of this recital is linked with Article 36.

↓ 2004/114/EC recital 19
(adapted)

~~The notion of prior authorisation includes the granting of work permits to students who wish to exercise an economic activity.~~

↓ 2004/114/EC recital 20
(adapted)

~~This Directive does not affect national legislation in the area of part-time work.~~

↓ 2004/114/EC recital 21
(adapted)

~~Provision should be made for fast-track admission procedures for study purposes or for pupil exchange schemes operated by recognised organisations in the Member States.~~

↓ 2004/114/EC recital 25
(adapted)

~~In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, and without prejudice to Article 4 of the said Protocol, these Member States are not taking part in the adoption of this Directive and are not bound by it or subject to its application~~.

↓ 2004/114/EC recital 26 (adapted)

~~In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application,~~

↓ 2005/71/EC recital 1 (adapted)

~~With a view to consolidating and giving structure to European research policy, the Commission considered it necessary in January 2000 to establish the European Research Area as the linchpin of the Community's future action in this field.~~

↓ 2005/71/EC recital 2 (adapted)

~~Endorsing the European Research Area, the Lisbon European Council in March 2000 set the Community the objective of becoming the most competitive and dynamic knowledge-based economy in the world by 2010.~~

↓ 2005/71/EC recital 3 (adapted)

~~The globalisation of the economy calls for greater mobility of researchers, something which was recognised by the sixth framework programme of the European Community[50], when it opened up its programmes further to researchers from outside the European Union.~~

↓ 2005/71/EC recital 4 (adapted)

~~The number of researchers which the Community will need by 2010 to meet the target set by the Barcelona European Council in March 2002 of 3 % of GDP invested in research is estimated at 700000. This target is to be met through a series of interlocking measures, such as making scientific careers more attractive to young people, promoting women's involvement in scientific research, extending the opportunities for training and mobility in research, improving career prospects for researchers in the Community and opening up the Community to third-country nationals who might be admitted for the purposes of research.~~

50 ~~Decision No 1513/2002/EC of the European Parliament and of the Council of 27 June 2002 concerning the sixth framework programme of the European Community for research, technological development and demonstration activities, contributing to the creation of the European Research Area and to innovation (2002 to 2006) (OJ L 232, 29.8.2002, p. 1). Decision amended by Decision No 786/2004/EC (OJ L 138, 30.4.2004, p. 7).~~

↓ 2005/71/EC recital 6 (adapted)

~~Implementation of this Directive should not encourage a brain drain from emerging or developing countries. Back-up measures to support researchers' reintegration into their countries of origin as well as the movement of researchers should be taken in partnership with the countries of origin with a view to establishing a comprehensive migration policy.~~

↓ 2005/71/EC recital 7 (adapted)

~~For the achievement of the objectives of the Lisbon process it is also important to foster the mobility within the Union of researchers who are EU citizens, and in particular researchers from the Member States which acceded in 2004, for the purpose of carrying out scientific research.~~

↓ 2005/71/EC recital 8 (adapted)

~~Given the openness imposed by changes in the world economy and the likely requirements to meet the 3 % of GDP target for investment in research, third-country researchers potentially eligible under this Directive should be defined broadly in accordance with their qualifications and the research project which they intend to carry out.~~

↓ 2005/71/EC recital 12 (adapted)

~~At the same time, the traditional avenues of admission (such as employment and traineeship) should be maintained, especially for doctoral students carrying out research as students, who should be excluded from the scope of this Directive and are covered by Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service[51].~~

↓ 2005/71/EC recital 16 (adapted)

~~This Directive adds a very important improvement in the field of social security as the non-discrimination principle also applies directly to persons coming to a Member State directly from a third country. Nevertheless, this Directive should not confer more rights than those already provided in existing Community legislation in the field of social security for third-country nationals who have cross-border elements between Member States. This Directive furthermore should not grant rights in relation to situations which lie outside the scope of Community legislation like for example family members residing in a third country.~~

51 ~~OJ L 375, 23.12.2004, p. 12.~~

~~↓ 2005/71/EC recital 17 (adapted)~~

~~It is important to foster the mobility of third-country nationals admitted for the purposes of carrying out scientific research as a means of developing and consolidating contacts and networks between partners and establishing the role of the European Research Area at world level. Researchers should be able to exercise mobility under the conditions established by this Directive. The conditions for exercising mobility under this Directive should not affect the rules currently governing recognition of the validity of the travel documents.~~

~~↓ 2005/71/EC recital 18 (adapted)~~

~~Special attention should be paid to the facilitation and support of the preservation of the unity of family members of the researchers, according to the Council Recommendation of 12 October 2005 to facilitate the admission of third-country nationals to carry out scientific research in the European Community[52].~~

~~↓ 2005/71/EC recital 19 (adapted)~~

~~In order to preserve family unity and to enable mobility, family members should be able to join the researcher in another Member State under the conditions determined by the national law of such Member State, including its obligations arising from bilateral or multilateral agreements.~~

52 ~~See page 26 of this Official Journal.~~

↓ 2005/71/EC recital 20 (adapted)

~~Holders of residence permits should be in principle allowed to submit an application for admission while remaining on the territory of the Member State concerned.~~

↓ 2005/71/EC recital 21 (adapted)

~~Member States should have the right to charge applicants for the processing of applications for residence permits.~~

↓ 2005/71/EC recital 26 (adapted)

~~In accordance with paragraph 34 of the Interinstitutional agreement on better law-making, Member States will be encouraged to draw up, for themselves and in the interest of the Community, their own tables, which will, as far as possible, illustrate the correlation between this Directive and the transposition measures, and to make them public.~~

↓ 2005/71/EC recital 27 (adapted)

~~In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and the Treaty establishing the European Community, Ireland has given notice by letter of 1 July 2004 of its wish to participate in the adoption and application of this Directive.~~

⇩ new

(45) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive amendment compared to the earlier Directives. The obligation to transpose the provisions which are unchanged arises under the earlier Directives.

(46) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and the dates of application of the Directives set out in Annex I, Part B,

🡻 2004/114/EC (adapted)
⇨ new
➲ Council

HAS ADOPTED THIS DIRECTIVE:

## CHAPTER I

## GENERAL PROVISIONS

*Article 1*

**Subject matter**[53]

This Directive determines:

(a) the conditions ~~for admission~~ ⇨ of entry ➲ to ➲ and residence ➲ , and the rights[54] ➲ ⇦ of third-country nationals ➲ and, where applicable, their family members[55] ➲ ➲ […] ➲ ➲ in ➲ territory of the Member States for a period exceeding ~~three months~~ ⇨ 90 days ⇦ for the purposes of ⌦ research ⌫ , studies, pupil exchange, ⇨ remunerated and ⇦ unremunerated training ~~or~~ , voluntary service ➲ or ➲ ⇨ au pairing ⇦ ; [56]

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53 **EL** stated that this proposal is not in full compliance with the subsidiarity principle since the regulation of remunerated trainees and au-pairs at EU level does not seem to have a significant added value. **EL** emphasised that the existing national provisions for remunerated trainees, on the one hand, and the absence of national provisions for au-pairs, on the other hand, lead to the conclusion that there is no actual need for the adoption of common EU rules. **EL** also stated that this proposal does not comply sufficiently with the proportionality principle. In particular, the modification of the current optional categories into binding categories reduces the degree of flexibility that is necessary for the Member States which should be left to decide whether to implement the EU legislation for the categories provided as optional by the current Directives.

54 **ES**: reservation. **CY** suggested to insert in the text the word "*obligations*" after "rights" as to read "*rights and obligations of third-country nationals*".

55 **FR** requested clarification and **PRES** stated that it refers to family members of researchers. **ES** stated that family members of researchers are not part of the subject matter of this proposal and therefore it suggested to be taken out from here and be inserted someplace else in the proposal. **NL** pointed out that Article 1 of the Blue Card Directive makes reference to family members.

56 **ES**: reservation. **AT**: scrutiny reservation. **NL** did not agree with the change to "90 days", preferring the mention to "3 months". **CION** explained that the term "90 days" is expected to be established upon adoption of the amended Schengen Borders Code. **FR** questioned whether the newly added wording "entry and residence" is really more appropriate than the original "admission". **IT** was in favour of broadening the coverage of the proposal also to researchers staying less than three months.

~~(b) the rules concerning the procedures for admitting third-country nationals to the territory of the Member States for those purposes.~~

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⇩ new
➲ Council

(b) ➲ […] ⊂ ➲ the conditions of entry to and residence, and the rights, of researchers and their family members, as well as students [and remunerated trainees], referred to in point (a), in Member States other than the Member State which first grants the third-country national an authorisation on the basis of this Directive. ⊂ ;[57]

(c) ➲ […] ⊂

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🡻 2005/71/EC (adapted)

~~CHAPTER I~~

~~GENERAL PROVISIONS~~

[57] **AT**: scrutiny reservation. **DE** supported the merger of both points (b) and (c). **DE, AT** opposed the inclusion of remunerated trainees in this provision.

~~Article 1~~

~~Purpose~~

~~This Directive lays down the conditions for the admission of third-country researchers to the Member States for more than three months for the purposes of carrying out a research project under hosting agreements with research organisations.~~

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| ↓ 2004/114/EC (adapted) |
| ➲ Council |

*Article 2*

**Scope**[58]

1. This Directive ➲ shall ➲ apply to third-country nationals who apply to be admitted to the territory of a Member State for the purpose of ⌦ research ⌫ ➲ and ➲ studies ➲ […] ➲ .

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58 **AT, CZ** preferred to maintain strict rules at national level to prevent the possibility of abuses. **CZ** pointed out that at the very least these new categories should not be made mandatory. **FR** deplored the fact that "*teachers*" are not part of the proposal's scope, although they could be relevant stakeholders either as accompanying adults in pupil exchange schemes or as direct beneficiaries of exchange programs. **FR** suggested that new provisions should be included in this proposal to cover the teachers.

➲ Member States may also decide to apply this Directive to third-country nationals who apply to be admitted for the purposes of [pupil exchange, remunerated or unremunerated training, voluntary service or] au pairing. ➲[59]

2. This Directive shall not apply to ⌦ third-country nationals ⌫ :[60]

(a) ~~third-country nationals~~ residing in a Member State as asylum-seekers, or under subsidiary forms of protection, or under temporary protection schemes;

(b) ~~third-country nationals~~ whose expulsion has been suspended for reasons of fact or of law;

(c) ~~third-country nationals~~ who are family members of Union citizens who have exercised their right to free movement within the Union;

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[59] - In favour of these categories to be optional: **NL, FI, CZ, SK, BE, DE, PL, AT, ES, PT, EE, IT, LV, SI, EL**
- In favour of these categories to be mandatory: **FR, SE, LU, CION**
- In favour to extend the scope to all pupils, including primary school pupils: **FR, RO, ES, LV, HU**
- Against extending the scope to all pupils, including primary school pupils: **FI, CZ, SK, BE, DE, PL, AT, PT, EE, IT, SE, SI, LU, EL, CY**
- In favour to extend the scope to teachers: **FR, ES, EE, IT**
- Against extending the scope to teachers: **FI, CZ, SK, BE, DE, RO, PL, AT, PT, LV, SE, SI, LU, HU, EL, CY**

[60] **FR** proposed the introduction of an additional exclusion point concerning those falling within regulated professions as defined in Directive 2005/36 on the recognition of professional qualifications. **CION** explained that Directive 2005/36 only applies to nationals of the Member States and that therefore it was no necessary to introduce this new exclusion point.

(d) ~~third-country nationals~~ who enjoy long-term resident status in a Member State in accordance with Council Directive 2003/109/EC[61] ➲ […] ➲ ;[62]

(e) ➲ […] ➲

[61] OJ L 16, 23.1.2004, p. 44

[62] **LV** would like to obtain clarification about whether persons who have acquired EU long-term resident status in accordance with Council Directive 2003/109/EC are included in the scope of this proposal. At the explanatory memorandum concerning Article 2 it is stated that this proposal does not cover persons who are EU long-term residents, however Article 2(2)(d) provides that this proposal will not apply to those persons who enjoy long-term resident status in a Member State in accordance with Council Directive 2003/109/EC and exercise their right to reside in another Member State in order to study or receive vocational training - hence the smaller range of persons than referred in the explanatory memorandum. **LV** would like to receive clarification regarding this point as it seems ambiguous**.** Either this proposal does not apply to the persons who have acquired EU long-term resident status in accordance with Council Directive 2003/109/EC or it does not apply to the persons who have acquired permanent resident status in accordance with Council Directive 2003/109/EC and who at the same time are exercising their right to reside in another Member State in order to study or receive vocational training? If it is a case that only EU long-term residents – students and trainees - are exempted from the scope of the Directive; additional justification for such decision would be welcomed in the explanatory memorandum. **LV** would support inclusion of all categories of EU long-term residents into the scope of the this proposal as Directive 2003/109/EC does not provide equally beneficial provisions for mobility of EU long-term residents (e.g., EU long-term residents do not have a free access to the labour market of other Member States during first 12 months of stay. At the same time, this proposal grants such right to students).

⇩ new

➲ Council

(f) who, together with their family members, and irrespective of their nationality, enjoy rights of free movement equivalent to those of citizens of the Union under agreements either between the Union and the Member States or between the Union and third countries;

(g) trainees who come to the Union in the context of an intra-corporate transfer under [Directive 2013/xx/EU on intra-corporate transfers];[63]

➲ (h) who are admitted as highly qualified workers in accordance with Council Directive 2009/50/EC. ➲

63 **DE** considered the boundaries between trainees in this proposal and "graduate trainees" in the ICT Directive proposal unclear. **ES** pointed out that the reference to "trainee" should be the same one used in the ICT Directive proposal. **CION** replied that the scheme set up in the ICT Directive proposal is a separate scheme which contains objective criteria for the determination of who is to be considered as "graduate trainee" under the ICT Directive proposal. On the other hand, **PL** did not see an overlap between both this proposal and the ICT Directive proposal and therefore proposed the deletion of this point.

↓ 2004/114/EC (adapted)

*Article 3*

**Definitions**[64]

For the purposes of this Directive:

(a) 'third-country national' means ~~any~~ ⌦ a ⌫ person who is not a citizen of the Union within the meaning of Article ~~17~~20(1) of the Treaty;

64 **FR** stated that the inclusion of stays of less than 90 days within the scope of this proposal would be relevant since many exchange travels fall outside the regular provisions of the scholar scheme, for example in case of sporting or animation activities. In the case that the scope of the proposal was to be further broadened to stays of less than 90 days, **FR** asked for the addition of two new definitions recording the entrance of two new categories in the possible target audiences of the directive: "*youth exchange programs for non-academic accomplishments*" (i bis) and "*youth workers for training visits and networking*" (i ter) :
*i bis) ""youth exchange programs for non-academic accomplishments" means a reciprocal or non-reciprocal exchange involving young third country nationals, in the context of a non-formal exchange scheme, operated by a youth organization or any organization recognised for that purpose by the Member State or the European Union."*
*i ter) ""youth workers for training visits and networking" means third country nationals working in youth and social professional environments, taking part to projects involving youth exchanges, networking and training, or working in the context of a non-formal educational program recognised for that purpose by the Member State or the European Union."*
**FR** also suggested, bearing in mind that European specific exchange programs such as Erasmus Mundus involve a substantial number of stakeholders and, most of the time, the participation of more than one or two countries, to add a new paragraph defining at least a "*third Member State*".

↓ 2005/71/EC (adapted)

~~Article 2~~

~~Definitions~~

~~For the purposes of this Directive:~~

~~(a)'third-country national' means any person who is not a Union citizen within the meaning of Article 17(1) of the Treaty;~~

↓ 2005/71/EC
➲ Council

(b)~~(d)~~ ~~'~~researcher' means a third-country national holding an appropriate higher education qualification, which gives access to doctoral programmes, who is selected by a research organisation for carrying out a research ➲ […] ➲ activity ➲ for which the above qualification is normally required;[65]

[65] **ES, AT**: scrutiny reservation. **ES** would like to include the possibility for the researchers to sign contracts. **HU** pointed out that this definition should also include hosting agreements since if there are no hosting agreements included in the definition, researchers who comply with the definition but has no hosting agreement could not be admitted according to Article 5(3) of this proposal. In other words, according to **HU**, in order to comply with Article 5(3), hosting agreements should be included in this definition.

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| ↓ 2004/114/EC<br>➲ Council |

(c) ~~(b)~~ 'student' means a third-country national accepted by a ➲ […] ➲ higher education ➲ institution ➲ […] ➲ ➲ and admitted to the territory of a Member State to pursue as his/her main activity a full-time course of study leading to a higher education qualification recognised by the Member State, including diplomas, certificates or doctoral degrees in a ➲ […] ➲ higher education ➲ institution ➲ , which may cover a preparatory course prior to such education according to its national legislation;[66]

[66] **ES, LV, EE, FI, SE, CY**: scrutiny reservation. **NL, BE, ES** expressed concerns about the reference in this point to "full-time course". This reference might indicate that the students should study during the whole day which would be in contradiction with the provision in Article 23(3) of this proposal that stipulates a minimum of hours per week that students are entitled to, in order to carry out economic activities. **CION** explained that the reference to a "full-time course" does not mean that courses have to encompass the whole day, for example a half-a-day course could be considered a full-time course. Therefore, there is no contradiction with the provision on allowing a minimum of hours per week for economic activities.
**FR** suggested the following rephrasing : *"'student" means a third country national enrolled by a higher education institution and admitted to the territory of a Member State to pursue as his/her main activity a full-time higher education, including all types of courses of study or sets of courses study, training or training for research, which may cover a preparatory course prior to such education according to its national legislation, and leading to a higher education qualification recognised by the Member State, including degrees, diplomas, or certificates awarded by a higher education institution"*
**EL** suggested the following changes:
"*'student' means a third-country national accepted by an establishment of higher education, recognised as such according to national legislation, and admitted to the territory of a Member State to pursue as his/her main activity a full-time course of study leading to a higher education qualification recognised by the Member State, including diplomas, certificates or doctoral degrees ~~in an establishment of higher education~~, which may cover a preparatory course prior to such education according to its national legislation.*"

(d) ~~(c)~~ 'school pupil' means a third-country national admitted to the territory of a Member State to follow a ➲ […] ➲ recognised and/or State or Regional ➲ programme of secondary education in the context of an exchange scheme ➲ or educational project[67] ➲ operated by ➲ […] ➲ a host entity or agent[68] ➲ ➲ […] ➲ in accordance with its national legislation or administrative practice;[69]

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67 **AT**: scrutiny reservation. **FR** stated that it is glad for the inclusion of "educational project", but also would like delegations to take into account its suggestion of including "*primary education*".

68 **SE, ES** requested clarification on what it is included in the notion of "secondary education". **CION** replied that the age range of 16-18 seems too limited and that probably lower ages are also included in "secondary education".

69 **SI, LV, EE**: scrutiny reservation. **FR** stated that it appears quite reductive to limit the scope of this proposal to pupil exchange schemes involving only secondary education pupils and reciprocal exchanges.
**FR** requested the following proposition to be taken into account : *"'"school pupil" means a third-country national admitted to the territory of a Member State to follow a recognised programme of primary or secondary education in the context of an exchange scheme or an educational project, operated by an organisation recognised for that purpose by the Member State in accordance with its national legislation or administrative practice."*
**FR** also suggested to include a minimum age, for example 6 years-old, which would mean to delete the expression "secondary education" throughout the text. **EE** pointed out that it would also like to cover a broader range of school pupils than what it is the case right now and stated to use internationally recognised standards as a guide. **HU** stated that it could only accept this definition if the school pupils group will become option in the text of the directive. **AT, NL, DE** did not agree with **FR**'s suggestion of a minimum age of 6. **SE** welcomed the fact of the deletion of the requirement of scheme recognition and reiterated its request for clarification on what it is included in the notion of "secondary education".

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| ↓ 2004/114/EC (adapted)<br>➲ Council |

(e) ~~(d)~~ 'unremunerated trainee' means a third-country national who has been admitted to the territory of a Member State ➲ , with an intention[70] to gain knowledge, practice and professional experience which is related to his/her educational training or profession[71], ⊂ for a training period without ➲ […] ⊂ ➲ payment[72] ⊂ in accordance with ~~its~~ the national legislation ⊠ of the Member State concerned ⊠;[73]

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70 **AT**: scrutiny reservation. **NL, DE, IT** expressed concerns about the use of "intention" in points (e) and (f). Instead, **NL, DE, IT** suggested to use the term "*purpose*" which they think is clearer.

71 **SE** suggested to delete the wording "or profession". It should be clear that there is a education purpose in this traineeship. According to **SE**, if the word "profession" is deleted, it would be clearer that this is not a form of employment.

72 Concerning "payment" in points (e) and (f):
**FR** pointed out that the FR version of the text should use the term "gratification". **FR** stated that there is a need to discuss about the fiscal consequences of the use of the term "payment". In **FR**, "gratification" is not taxed while the "payment" of a salary is taxed.
**SK, DE, AT,** : supported or at least were not against the use of "payment".
**BE** was against this term and preferred the term "remuneration". **IT** stated that the term "payment" means a problem. In the case of traineeships, **IT** pointed out that they are a non-labour-related service, but talking about "payment" refers to a typical employment relationship. Therefore **IT** thought that it is not appropriate to use this term in the context of traineeships.

73 **ES, BE, AT, LV, PT, DE, SE, FI**: scrutiny reservation. **DE, SE** suggested to re-draft the definition as follows:
"*'unremunerated trainee' means a third-country national who has been admitted to the territory of a Member State, in accordance with the national legislation of the Member State concerned, with a view to gain knowledge, practice and professional experience which is related to his/her educational training or profession, for a training period without payment;*"
**PT** had a problem with this since according to its legislation the training period is always paid, and therefore the notion of unremunerated training goes against its legislation. **LV** stated that it would like to allow trainees to be treated as school pupils in order to avoid abuse, so they cannot be used as fake employees. **ES** pointed out that it would like to also apply to trainees the notion of "reimbursement of expenses" as provided for in point (h). **DE, SE, PT, FI** stated that it is not clear whether vocational training is included within the category of trainees. **CION** pointed out that training can also cover vocational training in this proposal.

⇩ new

➲ Council

(f) 'remunerated trainee' means a third-country national who has been admitted to the territory of a Member State for a training period ➲ , with an intention[74] to gain knowledge, practice and professional experience which is related to his/her educational training or profession ➲ in return for which he/she receives ➲ […] ➲ ➲ payment ➲ in accordance with the national legislation of the Member State concerned;[75]

[74] **DE** suggested to use the term "*purpose*".

[75] **ES, BE, CZ, SE, DE, PT, FI, AT**: scrutiny reservation. **ES**: linguistic reservation concerning the Spanish word "aprendiz". **DE, SE** suggested to re-draft the definition as follows:
" *'remunerated trainee' means a third-country national who has been admitted to the territory of a Member State, in accordance with the national legislation of the Member State concerned, with a view to gain knowledge, practice and professional experience which is related to his/her educational training or profession in return for which he/she receives payment;*"
**AT** in addition raised the issue of differences between the EN and DE linguistic versions of this provision providing further confusion. **LV** mentioned its system concerning education programmes and questioned whether it could keep its current system – both unremunerated and remunerated trainees are admitted for training only under licensed educational programmes and providing they are students or pupils. **DE, AT** stated that it is important that vocational training does not fall within the scope of this proposal and that vocational training should be clearly differentiated from traineeship in the text.

(g) 'volunteer' means a third-country national admitted to the territory of a Member State to participate in a ➲ [...] ➲[76] voluntary service scheme;[77]

[76] **DE** preferred this point with the word "recognised" so it was against its deletion. **PRES** explained that the word "recognised" already appears in the definition of "voluntary service scheme" and it was therefore deleted since it was not necessary to repeat it twice.

[77] **ES, BE, NL, AT**: scrutiny reservation. **NL** insisted on making a reference to national law for such definition. **IT** proposed the following change in this definition: *" 'volunteer' means a third-country national admitted into the territory of a Member State ~~to participate in a recognised voluntary service scheme~~ in order to take part in a voluntary action and/or in an active citizenship scheme"*. **EL** proposed to add at the end of the definition the following: *"[...] in accordance with the national legislation of the Member State concerned."*

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| ↓ 2004/114/EC (adapted)<br>➲ Council |

(h)~~(f)~~ ‘voluntary service scheme’ means a programme of ➲ practical ⊂ activities ➲ […] ⊂ , based on a ⌦ scheme recognised by the Member ⌫ State ➲ concerned ⊂ or ⌦ the Union ⌫ ~~a Community scheme~~, pursuing objectives of general interest ➲ , in which the activities are unpaid, except for reimbursement of expenses[78], and there is no pursuit of profit ⊂ ;[79]

[78] **BE** did not agree with the notion of "reimbursement of expenses".

[79] **ES, BE, AT**: scrutiny reservation. **DE** expressed that it does not see the added value of regulating volunteers at EU level and questioned whether the subsidiarity principle was taken into account here.
**IT** proposed a new definition for this point instead of the one in the proposal:
*" 'volunteering and active citizenship scheme' means a scheme composed of solidarity and social inclusion initiatives, based on a project acknowledged by the Member State or the European Union, which pursues general interest objectives to be carried out within the organizations performing non-profit, social utility activities, according to the national regulations of each Member State regarding voluntary action and active citizenship ".*
**IT** preferred to avoid the use of any wording in the line of "voluntary work" since the word "work" implies an activity with a remuneration whereas "voluntary action" and "volunteering" imply an activity performed free of charge. **IT** proposed that each and every time the proposal refers to "voluntary work" it should be changed into "*voluntary action*" and "*volunteering*" should be included in the text instead of "voluntary scheme service". Also, **IT** proposed to include a reference to "*active citizenship scheme*" each time the proposal refers to "voluntary action" or to "volunteering". Furthermore, **IT** had doubts about the use of the word "service scheme" since the word "service" could imply an activity for remuneration. **CION** had a reservation on the inclusion of the word "practical". It cannot see the added-value of this addition. **SE** asked about what exactly "unpaid" means. According to **SE**, in some cases volunteers receive money. **PRES** explained that the compromise suggestion tried to convey the idea that volunteers should not receive remuneration.

⇩ new

➲ Council

(i) 'au pair' means a third-country national who is ➲ […] ➲ received by a ➲ host ➲ family in the territory of a Member State ➲ in order to improve his/her linguistic skills and his/her knowledge of the host country ➲ in exchange for light housework and taking care of children ➲ […] ➲ ;[80]

[80] **BE, AT**: scrutiny reservation. **CZ** asked **CION** whether the possibility of remuneration for au-pairs would not create a risk of confusion with employees. **CION** answered that what au-pairs receive, according to Article 14 of this proposal, that is to say, "pocket money", could not be considered as remuneration as it is understood for employees. **DE** made reference to the subsidiarity principle and asked **CION** to explain why there is a need to include this category in the proposal and how this definition and other provisions within the proposal, like for example the signing of an agreement between the au pair and the host family, may precisely help in the fight against abuse. **CION** answered that au-pairs category fosters cultural exchanges and since this cultural exchanges are considered important for the EU it is necessary to have rules at EU level. **CION** also explained that including this category in the proposal amounts to consider that au-pairs have enforceable rights and this fact, even if does not end single-handedly with abuse, would help fighting against it. **DE** asked whether the tasks of the au-pairs are cumulative, that is to say, they have to carry out light housework and taking care of children, or exclusive, that is to say, carry out light housework or taking care of children. **CION** answered that they are cumulative. **NL** pointed out that there is only "anecdotal" evidence of abuse concerning au pairs and questioned if this "anecdotal" evidence is enough to warrant to include this category in the proposal.

↓ 2005/71/EC

(j) ~~(b)~~ 'research' means creative work undertaken on a systematic basis in order to increase the stock of knowledge, including knowledge of man, culture and society, and the use of this stock of knowledge to devise new applications;[81]

(k) ~~(c)~~ 'research organisation' means any public or private organisation which conducts research and which has been approved for the purposes of this Directive by a Member State in accordance with the latter's legislation or administrative practice;[82]

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↓ 2004/114/EC (adapted)
➲ Council

(l) ~~(e)~~ '⌦ education ➲ […] ➲ ⌫ establishment' means a public or private ➲ secondary education ➲ establishment recognised by the host Member State and/or whose courses of study are recognised in accordance with its national legislation or administrative practice ⌦ on the basis of transparent criteria ⌫ for the purposes set out in this Directive;

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81 **AT** put forward a reservation on the DE version of the definition which does not correlate with the EN version.
**EL** suggested the following addition:
"*'research' means creative and innovative work undertaken on a systematic basis in order to increase the stock of knowledge, including knowledge of man, culture and society, and the use of this stock of knowledge to devise new applications;*"

82 **FR** proposed to replace "research organisation" by the wording "*establishment of higher education and research*" and to add the expression "*teaching assignments and research*".

⇩ new

➲ Council

➲ (la) 'higher education institution' means any type of higher education institution, in accordance with national legislation or practice, which offers recognised higher education[83] degrees or other recognised tertiary level qualifications, whatever such establishments may be called, or any institution, if applicable in accordance with national legislation or practice, which offers recognised vocational education or training at tertiary level. ➲[84]

➲ (lb) 'agent' means the legal person, regardless of its legal form, who recruits a third country national on behalf of the host entity for the purpose of studies, pupil exchange, remunerated or unremunerated training, voluntary service or au pairing; ➲[85]

➲(lc) 'host entity' means the entity established in the territory of the Member State concerned in accordance with national law, or the host family in case of au pairing, to which the third-country national is accepted for the purposes of this Directive; ➲[86]

(m) ➲ […] ➲

(n) 'employment' means the exercise of activities covering whatever form of labour or work regulated under national law or ➲ in accordance with ➲ established practice for ➲ […] ➲ ➲ or ➲ under the direction and ➲ /or ➲ supervision of an employer;[87]

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83 **FR** expressed a reservation on this wording. **FR** wanted to also include "research institutions", and therefore it proposed the following addition: "*research and/or higher education institution*".

84 **LV, AT, SI, PT, FI, ES, BE**: scrutiny reservation.

85 **RO, CZ, ES, AT, FR, DE, PT, IT, SI, FI**: scrutiny reservation.

86 **AT, SI, FI**: scrutiny reservation.

87 **BE, AT, FR:** scrutiny reservation.

(o) 'first Member State' means the Member State which first grants a third-country national an authorisation on the basis of this Directive;[88]

(p) 'second Member State' means any Member State other than the first Member State;[89]

(q) ' ➲ […] ⊂ ➲ ➲ EU, ⊂ bilateral and multilateral[90] ⊂ programmes ➲ **[…]** ⊂ ➲ that comprise ⊂ mobility measures' means ➲ […] ⊂ programmes ➲ funded by the Union or by two or more Member States ⊂ promoting ➲ […] ⊂ mobility[91] of third country nationals ➲ […] ⊂ ➲ in ⊂ the Union ➲ or in the relevant Member States participating in such programmes ⊂ ;[92]

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88 **FR**: scrutiny reservation.

89 **FR**: scrutiny reservation.

90 **AT, ES, EL, BE, SE**: scrutiny reservation. **NL, FI, SK, CZ** had no objection to the inclusion of bilateral/multilateral programmes. **HR** was of the opinion that contracts based on activities financed by the European Union and/or more than one Member Stare are appropriate. **DE, ES, PT** asked whether this new wording would include programmes between just one Member State and a third-country. **PRES** answered that such programmes will not be covered by this definition. **BE** asked whether the concept of bilateral and multilateral is only referring to universities, or also other programmes from the State are included. **PRES** answered that the current wording covers State programmes. **SE** was of the opinion that to include bilateral/multilateral programmes could lead to application problems since many different types of programmes could come in question. **SE** requested further clarification about whether students covered by bilateral/multilateral programmes could be granted a residence permit under the provisions of this proposal, even if such programmes are not mentioned specifically here in point (q). **CY** opposed the inclusion of bilateral/multilateral programmes in the case these would involve agreements between private higher institutions.

91 **FR** stated that it should be better to indicate whether this refers to short or long-term mobility.

92 **FI, AT, DE**: scrutiny reservation. **EL** requested clarification about the meaning of the last part added "relevant Member States participating in such programmes". **PRES** explained that in case of bilateral or multilateral programmes, mobility would be possible only among the Member States concerned by such programmes. **FR, EE** wondered whether national programmes of the Member States are also included in this provision. **SE** stated that it was important to clarify what programmes are actually covered by this provision. **SE** asked whether there would be a list of such programmes, and how these programmes are going to work in practice.

(r) 'authorisation' means a residence permit[93] ➲ […] ➲ or ➲ , if provided for in national law, ➲ a long-stay visa ➲ issued for the purposes of this Directive ➲ ;[94]

➲ (ra) 'residence permit' means an authorisation issued using the format laid down in Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals entitling its holder to stay legally on the territory of a Member State; ➲[95]

(s) 'long-stay visa' means an authorisation issued by a Member State as provided for in Article 18 of the Schengen Convention or issued in accordance with the national law of Member States ➲ […] ➲ ➲ not implementing ➲ the Schengen acquis ➲ in full ➲ .[96]

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93 **CY** suggested to insert the word "*entry*" in the definition, as to read "*entry/residence permit*". The reason of this insertion in various places of the text is because **CY** issues such entry permits to authorise the entry of third-country nationals for long stays either for work or studies. **CY** does not issue short-term or national long-term visas. Furthermore, the residence permit is issued only when the third-country national is already in **CY**.

94 **FR, ES**: scrutiny reservation.

95 **FR, ES**: scrutiny reservation.

96 **FR, ES**: scrutiny reservation.

(t) ➲ "family members"[97] means third country nationals as defined in Article 4(1) of Directive 2003/86/EC[98] ➲

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↓ 2004/114/EC

~~(g)'residence permit' means any authorisation issued by the authorities of a Member State allowing a third-country national to stay legally in its territory, in accordance with Article 1(2)(a) of Regulation (EC) No 1030/2002.~~

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↓ 2005/71/EC (adapted)

~~(e)'residence permit' means any authorisation bearing the term 'researcher' issued by the authorities of a Member State allowing a third-country national to stay legally on its territory, in accordance with Article 1(2)(a) of Regulation (EC) No 1030/2002.~~

~~*Article 3*~~

~~**Scope**~~

~~1. This Directive shall apply to third-country nationals who apply to be admitted to the territory of a Member State for the purpose of carrying out a research project.~~

~~2. This Directive shall not apply to:~~

~~(a) third-country nationals staying in a Member State as applicants for international protection or under temporary protection schemes;~~

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97 **FR**: scrutiny reservation.

98 OJ L 251, 3.10.2003, p. 12.

~~(b) third-country nationals applying to reside in a Member State as students within the meaning of Directive 2004/114/EC in order to carry out research leading to a doctoral degree;~~

~~(c) third-country nationals whose expulsion has been suspended for reasons of fact or law;~~

~~(d) researchers seconded by a research organisation to another research organisation in another Member State.~~

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↓ 2005/71/EC (adapted)

~~*Article 4*~~

**~~More favourable provisions~~**

~~1. This Directive shall be without prejudice to more favourable provisions of:~~

~~(a) bilateral or multilateral agreements concluded between the Community or between the Community and its Member States on the one hand and one or more third countries on the other;~~

~~(b) bilateral or multilateral agreements concluded between one or more Member States and one or more third countries.~~

~~2. This Directive shall not affect the right of Member States to adopt or retain more favourable provisions for persons to whom it applies.~~

↓ 2004/114/EC (adapted)
⇨ new
➲ Council

*Article 4*

**More favourable provisions**

1. This Directive shall be without prejudice to more favourable provisions of:

(a) bilateral or multilateral agreements ⌦ concluded ⌫ between the ~~Community~~ ⌦ Union ⌫ or the ~~Community~~ ⌦ Union ⌫ and its Member States and one or more third countries; or

(b) bilateral or multilateral agreements ⌦ concluded ⌫ between one or more Member States and one or more third countries.

2. This Directive shall be without prejudice to the right of Member States to adopt or maintain provisions that are more favourable to the persons to whom it applies ⇨ with respect to Articles ➲ 16, ➲ 21, 22, 23, 24, 25 and 29 ➲ […] ➲ ⇦ .[99]

[99] **HU**: scrutiny reservation. **ES**: reservation. **DE, NL, ES** stated that even though they support the regulation of "researcher" and "student" categories in this proposal, it is very important for them nonetheless that parallel national schemes for these two categories be maintained. **ES** requires an article similar to article 4(2) of the Directive 2009/50/EC of May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment which says: "*This Directive shall not affect the right of Member States to adopt or retain more favourable provisions for persons to whom it applies …*". **DE** stated that currently it applies more favourable admission criteria. **DE** asked **CION** whether there would be possible to continue admitting researchers and students under easier conditions as **DE** does currently. **DE** mentioned that for example, as far as hosting agreements stipulated in Article 9 of the proposal are concerned, a lot of institutes in **DE** are not ready to sign them and **DE** would still like to be able to admit researchers without having to sign hosting agreements. **RO, DE** stated that this proposal should bring a minimum level of harmonisation and let Member States to decide themselves the more favourable provisions to be applied. **NL** also insisted in having the possibility of applying more favourable admission criteria in order to better attract researchers and students. **NL** suggested the following deletion in paragraph 2:
"*This Directive shall be without prejudice to the right of Member States to adopt or maintain provisions that are more favourable to the persons to whom it applies ~~with respect to Articles 21, 22, 23, 24, 25 and 29, especially in the context of Mobility Partnerships~~*."
**NL** pointed out that the provision about more favourable provisions in Directives 2004/114 and 2005/71 is not limited to certain articles. According to **NL** it is contrary to the aim of this proposal (stimulating the admission of researchers and students and the other categories) to restrict that possibility of more favourable treatment. **IT** stressed that it was very important to try to align this proposal with national practices, and in particular in the field of volunteering.
**CION** answered that it does not like the possibility for Member States to apply parallel schemes. **CION** is of the opinion that admission conditions should be harmonised in the EU, but does not oppose that Member States be able to apply more favourable rights. **CION** also stated that it is open to accept more flexibility concerning admission conditions, but once agreed on a certain level for admission conditions, **CION** does not want fragmentation and is in favour of a single scheme.

## CHAPTER II

## ~~CONDITIONS OF~~ ADMISSION

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| ↓ 2004/114/EC |
| ➲ Council |

*Article 5*

**Principle ➲ s ➲ [100]**

1. The admission of a third-country national under ➲ the terms of ➲ this Directive shall be subject to the verification of documentary evidence showing that he/she meets the general conditions laid down in Article 6 and the specific conditions in whichever of Articles 7 to ~~11~~ 14 applies to the relevant category.[101]

100 **AT, PL**: scrutiny reservation on the whole article.

101 **HU** requested clarification as to whether the requirement of "documentary evidence" would preclude Member States from requiring other types of controls such as tests, interviews, control of the knowledge of the language of the host country, etc. **HU** would like **CION** to clarify how "documentary evidence" should be interpreted in this article. **CION** answered that Article 10 of this proposal complements this article since it stipulates the types of evidence that have to be provided. **CION** went on stating that there is no purpose to limit the interpretation to just documents and that language tests and interviews could also fall within the wording "documentary evidence".

⇩ new

➲ Council

2. Once all the general and specific conditions for admission are fulfilled, applicants shall be entitled to a ➲ n authorisation[102] ⊂ ➲ […] ⊂ . If a Member State issues residence permits only on its territory ➲ […] ⊂ and all the admission conditions[103] laid down in this Directive are fulfilled, the Member State concerned shall ➲ grant ⊂ ➲ […] ⊂ the third country national ➲ every facility to obtain[104] ⊂ the requisite visa ➲ or an equivalent permit for entry to[105] ⊂ ➲ the territory of the Member State concerned ⊂ .[106]

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102 **DE** agreed with the inclusion of the word "authorisation", but would like that this would not be applicable to trainees and au-pairs. **EL** pointed out that the text should be clearer concerning the meaning of the term "authorisation". It might be a national visa or national visa plus residence permit. In this case, Member States will decide for the appropriate model of authorisation (national visa without residence permit or national visa plus residence permit) related to the specific category and the residence period. **EL** also suggested the following changes in the wording of this paragraph: *"[…] the Member State concerned may facilitate the third-country national to obtain the requisite visa to enter the territory of the Member State concerned."*
**PL** said that the inclusion of the term "authorisation" multiplies the number of terms used and therefore it makes the text more complicated.

103 **CZ** asked **CION** for clarification since it is not clear whether the "admission conditions" wording refers to the granting of a permit.

104 **DE** did not agree with the use of the wording concerning "facilitation". **PL** stated that it is unclear how the wording on "facilitation" relate to the Schengen Visa Code. This facilitation could only relate with long-stay visas and not short-term visas.

105 **DE** requested to make clear that this insertion is for non-Schengen Member States.

106 **CZ, EE, IT, FR:** scrutiny reservation. **CZ** pointed out that the provisions of this proposal aim to harmonise practice, or rather to set uniform policies and procedures in the designated area. This means that third-country nationals should primarily apply for a residence permit, if the legislation of the Member State allows it, and maintain the national responsibility on the issuance of long-term visas. **EE** does not see that this paragraph gives any added value and is cumbersome. **EE** is not against the insertion of "authorisation" but it would prefer the deletion of this paragraph 2. **EL** presented a reservation on this paragraph since it thinks that a reference to the volumes of admission is necessary, given that third-country nationals are given the possibility to work in the territory of the Member States. **CION** did not consider this necessary, since the provision on stay after the end of research/study gives a right to "job-seeking" rather than "access" to the labour market. Member States would therefore retain full control of access to their labour market.

➲ 3. [This Directive shall be without prejudice to the right of Member States to issue residence permits other than those regulated by this Directive for any purpose referred to in Article 2 for third-country nationals who fall outside the scope of this Directive] ➲[107]

[107] **NL** agreed with the insertion of this paragraph. It also proposed to add at the end of this paragraph additional wording: "*or do not meet the criteria set out in this Directive*". **NL** said that it would like that national schemes could also be applied. **HU** questioned how the mention to "who fall outside the scope of this Directive" should be interpreted. **PRES** clarified that this means that, in cases where third-country nationals do not fall within the scope of this Directive, Member States could apply their national schemes. **AT** agreed with paragraphs 2 and 3 and supported the proposal from **NL**. **ES** presented a reservation on this paragraph. **DE** stated that this paragraph, as it is currently worded, is not very helpful since, according to **DE**, it is self-evident that Member States will apply their rules if a person does not fall within the scope of this Directive. **DE** would like that more favourable national rules could also be applicable. **CION** agreed with other delegations that the wording of this paragraph is not clear.

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| ↓ 2004/114/EC<br>➲ Council |

➲ *Article 5a*

**Volumes of admission**[108]

This Directive shall not affect the right of a Member State to determine the volumes of admission of third-country nationals referred to in Article 2(1), when they are or intend to be in an employment relationship with an employer established in the Member State concerned. On this basis and for the purposes of this Directive, an application for authorisation may be either considered inadmissible or be refused. ➲[109]

[108] **EL** requested to add a new article making reference to volumes of admission and the right of the Member States to carry out labour market tests. **EL** proposed the following wording:
"*Article 5a*
*Volumes of admission*
*Where a certain category of third country nationals covered by this Directive exercise activities covering whatever form of labour or work according to the national law or practice of a Member State, the Member State may take into account the situation of its labour market when determines the volumes of admission for this category.*"

[109] **AT**: scrutiny reservation. **FR, DE** stated that the wording is too general and it needs clarification. It has to be specified to what groups the volumes of admission applies. **ES**: reservation. According to **ES**, this article should not be applicable to volunteers and students. **CION** stated that it does not want this provision to extend the scope of Article 79(5) of the TFEU and cover students, when students does not enter the EU to work but to study. As to the wording of this article, **CION** was of the opinion that it should be clarified and improved, maybe stating expressly that students should not be included.

*Article 6*[110]

**General conditions**[111]

1. ➲ 1. ➲ A third-country national who applies to be admitted for the purposes set out in this Directive shall:

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110 **CZ** proposed, inspired by Article 7 of Directive 2003/86/EC, to add a new article to the text, for example after Article 6 on general conditions, in which Member States may require third-country nationals to comply with integration measures, in accordance with national law. **CZ** explained that it has established preparatory one-day, free of charge, courses for adaptation and integration of newly arrived third-country nationals, who should be passed during the first 6 months (or at the latest during the first year) of stay. **CZ** believes these courses are an important tool of integration/adaptation for third-country nationals.

111 **NL** suggested to include in this Article 6 the notion of "*conditionality*". **NL** pointed out that in the JHA Council Conclusions of June 2011 on the EU strategy on Readmission the concept of "conditionality" was already adopted as an instrument to press third countries to fulfil their international-juridical obligations regarding the re-admission of their nationals. Consequently, **NL** further suggested the inclusion of a new paragraph in this article as follow:
"*Member States may refuse the application for admission of a third-country national covered by the Articles 7 to 11 when the relevant authorities of the country of origin of the third-country national do not re-admit their illegally-staying nationals on the territory of the Member State concerned or do not cooperate sufficiently with regard to their re-admission.*"
**NL** stated that this suggested new paragraph is a concrete implementation of this concept of "conditionality". On the basis of this new paragraph Member States may connect the granting of a residence permit for the purposes of this proposal to the efforts of the country of origin of the applicant regarding the re-admission of illegally staying nationals. The rationale of this proposal is that if a third country does not cooperate sufficiently in the area of re-admission, there is a greater risk that that third-country national will stay illegally after his legal stay in a Member State. **NL** also pointed out that this is a "may" clause so Member States are not obliged to apply it.
**DE** suggested to add the following new provision, either in this article or in Article 18: *"When examining an application Member States shall verify whether the third country national does not present a risk of illegal immigration."*

(a) present a valid travel document as determined by national legislation; Member States may require the period of validity of the travel document to cover at least the duration of the planned stay;[112]

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↓ 2004/114/EC (adapted)

(b) if he/she is a minor under the national legislation of the host Member State, present a parental authorisation ⌦ or equivalent ⌫ for the planned stay;

(c) have sickness insurance ~~in respect of~~ ⌦ for ⌫ all risks normally covered for ~~its own~~ nationals ~~in~~ ⌦ of ⌫ the Member State concerned;[113]

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112 **NL** made the following suggestion in order for the proposal to be in line with the approach of the Blue Card Directive:
*"(a) present a valid travel document as determined by national legislation and, if required, an application for a visa; Member States may require the period of validity of the travel document to cover at least the duration of the planned stay;"*

113 **CZ**, supported by **CY**, advocated for inserting "*cost of repatriation for medical reasons and repatriation of remains*" as a criterion for admission. Since these costs are not covered by public health insurance, because do not fall under the "risks normally covered for nationals of the Member State concerned", **CZ** considered that it is crucial that this point (c) covers these services as well. **CZ** also suggested to set a clear indication that health insurance is arranged without the participation of the insured person and for the whole period of his/her residence in the territory of the State concerned. **PL** requested that a mention to "travel health insurance" is introduced as well.

↓ 2004/114/EC
➲ Council

(d) not be regarded as a threat to public policy, public security or public health;[114]

(e) provide proof, if the Member State so requests, that he/she has paid the fee for ➲ […] ⊂ ➲ handling ⊂ the application on the basis of Article ~~20~~31.[115]

⇩ new
➲ Council

➲ […] ⊂ ➲ (f) provide the evidence requested by the Member State concerned that during his/her stay he/she will have sufficient resources to cover his/her subsistence and return travel costs and will not have recourse to the Member State's social assistance system, without prejudice to an individual examination of each case. ⊂[116]

114 **FR** suggested the inclusion of the following wording at the end of this point: "*and threat to the national scientific, technical and logistic potential*". **NL** presented a scrutiny reservation on **FR**'s suggestion. It asked **FR** to explain further and give an example of what that wording means. **FR** answered that it wants to protect scientific knowledge in research laboratories. The goal is to fight against industrial espionage. **HU** then questioned whether the threat of industrial espionage was not included already in the notion of "threat to public policy". **HU** also questioned whether it was not more appropriate to make a reference to this in a recital. **CION** supported **HU** comments.

115 **NL** proposed that long-stay visas should also fall within the scope of this article.

116 **SI**: reservation since it has doubts that the provision be necessary at all. **HU, PT**: scrutiny reservation. **PL** was of the opinion that this point does not serve legal certainty since Member States have a big leeway according to its wording. **AT** welcomed the reintroduction of point (f). **SE** asked what was the meaning of "during his/her stay". **SE, PT** stated that this provision entails requirements that are hard to be met, specially in cases of long stays like for example stays of 4 years. The third-country national can provide evidence that has sufficient resources at the beginning of the period of stay, but if the period is long it is thus more difficult, and in addition if a renewal of the authorisation is needed, then new evidence has to be provided again.

➲ 2. Member States may require the applicant to provide, at the latest at the time of the issuance of the authorisation[117], the address of the third-country national concerned in the territory of the Member State. [118] ➲

➲ 3. Where a certain category of third-country nationals covered by this Directive are or intend to be in an employment relationship with an employer established in the Member State concerned, the Member State may take into account the situation of its labour market while deciding on applications for admission of these third-country nationals. ➲[119]

➲ 4. Member States may lay down a reference amount which they regard as constituting "sufficient resources" as referred to under paragraph (1)(f), which may take into account the level of minimum national wages, and, where applicable, the number of family members. The assessment of the sufficient resources shall be based on an individual examination of the case. ➲

➲ 5. Applications from third-country nationals wishing to be admitted for the purpose set out in this directive shall be considered and examined when the third-country national concerned is residing outside the territory of the Member State to which he or she wishes to be admitted. ➲

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117 **CY** suggested to replace "issuance of the authorisation" by "*issuance of residence permit*".

118 **ES, SI**: scrutiny reservation. **PL, EE, FR, CZ, SK, AT** supported the inclusion of this new paragraph.

119 **AT, FR**: scrutiny reservation. **ES** presented a reservation since it does not want the employment element included. **DE** was very critical with the use in this paragraph of the words "take into account". **CZ** supported the wording of this paragraph. **HU** requested that it should be clarified whether this would cover all categories or only certain categories which activities are considered as employment activities. **PRES** pointed out that it is difficult to say since in some Member States some categories are considered as workers and in other Member States are not. **CION** did not have objections in general concerning this paragraph, but presented a reservation for the time being, since it would like to ascertain for sure that this paragraph does not apply to students.

➲ 6. Member States may accept, in accordance with their national legislation, an application submitted when the third-country national concerned is already in their territory. ➲

➲ 7. Member States shall determine whether applications for authorisations are to be made by the third-country national and/or by the host entity or the agent concerned. ➲

➲ 8. Where the third-country national is recruited through an agent and the application is submitted by the third-country national, Member States may require the applicant to indicate the name of the agent. ➲

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🡻 2004/114/EC (adapted)

~~2. Member States shall facilitate the admission procedure for the third-country nationals covered by Articles 7 to 11 who participate in Community programmes enhancing mobility towards or within the Community.~~

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🡻 2005/71/EC (adapted)

~~CHAPTER III~~

~~ADMISSION OF RESEARCHERS~~

~~Article 7~~

~~Conditions for admission~~

~~1. A third-country national who applies to be admitted for the purposes set out in this Directive shall:~~

~~(a) present a valid travel document, as determined by national law. Member States may require the period of the validity of the travel document to cover at least the duration of the residence permit;~~

~~(b) present a hosting agreement signed with a research organisation in accordance with Article 6(2);~~

~~(c) where appropriate, present a statement of financial responsibility issued by the research organisation in accordance with Article 6(3); and~~

~~(d) not be considered to pose a threat to public policy, public security or public health.~~

~~Member States shall check that all the conditions referred to in points (a), (b), (c) and (d) are met.~~

~~2. Member States may also check the terms upon which the hosting agreement has been based and concluded.~~

~~3. Once the checks referred to in paragraphs 1 and 2 have been positively concluded, researchers shall be admitted on the territory of the Member States to carry out the hosting agreement.~~

⇩ new

➲ Council

➲ *Article 6a*[120]

120 **SI, FI, AT, BE, PL, RO, DE, HU, IT, EE, ES, CZ, PT, SE, SK**: scrutiny reservation. **FR, DE, EE** stated that an "agent" should not be the only route for acceptance of third-country nationals. Passing via an agent should not be unavoidable. **NL** wanted to make clear that its suggestion about including an agent is an optional provision, so Member States will have discretion about recognising categories of agents or whether to use agents at all. **NL** further stated that once a Member State decides to adopt the agent scheme, only the agent is the route for acceptance of third-country nationals. **NL** does not agree with **PRES** suggestion since it makes possible for third-country nationals to decide whether go through a recognised agent or not. **IT** supported **PRES**'s text since the **PRES**'s proposal is more flexible than **NL**'s proposal. **IT** also requested a better definition of agent. **HU** raised the question of how to compare these agents with those mentioned in the Services Directive. **CION** expressed a reservation on the notion of agent but it has a preference for the **PRES**'s approach. **CION** was specially concerned about the use of the agent scheme to students. This scheme may put universities in a tight spot financially.
**NL** submitted the following wording for Article 6a:
"*Article 6a: Approval of the agent and/or host entity in case of study, pupil exchange, remunerated or unremunerated training, voluntary services or au pairing*

*1. Member States may require that the agent wishing to recruit and/or the host entity wishing to host a third country national for the purpose of studies, pupil exchange, remunerated and unremunerated training, voluntary service or au pairing shall first be approved for that purpose.*

*2. The approval of the agent or the host entity shall be in accordance with procedures set out in the national law or administrative practice of the Member States.*

*3. National law may regulate:*
*(a) the validity of the approval;*
*(b) the obligations and liabilities connected to the status of an approved agent or an approved host entity;*
*(c) the sanctions against the approved agent or host entity in case of non-compliance of the provisions of this Directive and/or national legislation.*"

**NL** pointed out, more in detail, that Member States may require that the agent and/or the host entity be approved before they are allowed to recruit/host the third country national. There is thus no obligation for Member States. According to **NL**, this approval is an important instrument to guarantee that the agent/host entity is reliable.

Examples of tests before approval of a agent/host are a test on financial reliability, criminal records, and correct payment of taxes and premiums. Therefore, approval can play an important role in preventing abuse/misuse of the admission of third country nationals, especially those who are in a vulnerable position. **NL** also stated that if Member States decide to introduce the requirement of approval, this should be regulated in national law or administrative practices for legal certainty. Furthermore it is up to the Member States how they regulate the approval, and the rights and obligations emerging from the approval. **NL** pointed out that the approval means some administrative burden for the host entity/agent. The proposal will compensate this burden with a fast track procedure. Because the host entity/agent has passed the test on reliability, his application can be processed faster, in a decision time of maximum 45 days (see **NL** suggestion on a new paragraph 1a in article 29). **NL** explained that if after initial approval the agent/host entity no longer fulfils the conditions, the approval can be withdrawn. This can also mean the withdrawal of the residence permit of the third-country national, because according to **NL** it could be undesirable that the third-country national resides longer with an unreliable host entity.

**Approval of the agent and/or host entity in case of study, pupil exchange, remunerated or unremunerated training, voluntary services or au pairing**

1. Member States may provide that students, pupils, remunerated and unremunerated trainees, volunteers or au-pairs have the possibility to be recruited through approved agents or hosted by approved host entities for the purposes of admission according to this Directive. Member States may also provide that au-pairs can be admitted only when they are recruited by such approved agents.[121]

2. The approval of the agent or the host entity shall be in accordance with procedures set out in the national law or administrative practice of the Member States.

*Article 7*

**Specific conditions for researchers[122]**

1. In addition to the general conditions laid down in Article 6, a third-country national who applies to be admitted for the purpose of [...] research activity[123] shall:

(a) present a hosting agreement[124] signed with a research organisation in accordance with Article 9(1) and Article 9(2);

121 **AT**: scrutiny reservation, but it has to remain a "may" clause. It will not support a "shall" clause.

122 **DE** found the conditions imposed on researchers overly restrictive.

123 **AT**: reservation on the use of "research activity", instead of the original "research project".

124 **ES** presented a reservation since it considered that this provision needs also to include "*contracts*" as well as hosting agreements.

(b) where appropriate, present a statement of financial responsibility issued by the research organisation ➲ […] ➲ as referred to in ➲ Article ➲ […] ➲ 8 ➲ (3).[125]

2. Member States may ➲ […] ➲ require ➲ the terms upon which the hosting agreement[126] has been based and concluded ➲ to meet requirements established in national law ➲ .[127]

3. ➲ […] ➲[128]

4. ➲ […] ➲

5. ➲ […] ➲

6. ➲ […] ➲

125 **FR** considered that this Article 7(1)(b) overlaps with Article 6(f) on sufficient resources and therefore it is redundant. **CION** considered it necessary as Article 7(1)(b) links to Article 8(3) and 9(3) where Member States may require an undertaking by the host organisation to reimburse the costs of return and others.

126 **ES** suggested to include the possibility for researchers to use also an employment contract.

127 **HU**: scrutiny reservation.

128 **DE** asked why this paragraph was deleted to which **PRES** answered that the reason was that such paragraph was misleading.

↓ 2005/71/EC (adapted)

## ~~CHAPTER II~~

## ~~RESEARCH ORGANISATIONS~~

*Article ~~5~~ 8*

**Approval ⌦ of research organisations ⌫**

↓ 2005/71/EC
➲ Council

1. Any research organisation wishing to host a researcher under the admission procedure laid down in this Directive shall first be approved for that purpose by the Member State concerned.

2. The approval of the research organisations shall be in accordance with procedures set out in the national law or administrative practice of the Member States. Applications for approval by both public and private organisations shall be made in accordance with those procedures and be based on their statutory tasks or corporate purposes as appropriate and on proof that they conduct research.

   The approval granted to a research organisation shall be for a minimum period of five years. In exceptional cases, Member States may grant approval for a shorter period.

3. Member States may require, in accordance with national legislation, a written undertaking of the research organisation that in cases where a researcher remains illegally in the territory of the Member State concerned, the said organisation is responsible for reimbursing the costs related to his/her stay[129] and return incurred by public funds. The financial responsibility of the research organisation shall end at the latest six months after the termination of the hosting agreement.

4. Member States may provide that, within two months of the date of expiry of the hosting agreement concerned, the approved organisation shall provide the competent authorities designated for the purpose by the Member States with confirmation that the work has been carried out for each of the research ➲ […] ➲ activities ➲ in respect of which a hosting agreement has been signed pursuant to Article ~~6~~9.

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| ↓ 2005/71/EC (adapted) |
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| ➲ Council |

5. The competent authorities in each Member State shall publish and update ~~regularly~~ lists of the research organisations approved for the purposes of this Directive ⌦ whenever ➲ […] ➲ a research organisation is enlisted or removed from the list ➲ ⌫ .

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[129] **CZ** suggested the following addition: *"[…] the said organisation is responsible for reimbursing the costs related to his/her stay, including all of the costs of healthcare, and return incurred by public funds. […]"*
**CZ** pointed out that the organisation should be required to pay all the costs of healthcare received, and not only the ones which are covered by public health insurance, for example healthcare provided by non-contracting providers of medical services not covered by public health insurance.

↓ 2005/71/EC
➲ Council

6. A Member State may, among other measures, refuse to renew or decide to withdraw the approval of a research organisation which no longer meets the conditions laid down in paragraphs 2, 3 and 4 or in cases where the approval has been fraudulently acquired or where a research organisation has signed a hosting agreement with a third-country national fraudulently or negligently. Where ➲ […] ➲ ➲ an application for renewal ➲ has been refused or ➲ where the approval has been ➲ withdrawn, the organisation concerned may be banned from reapplying for approval up to five years from the date of publication of the decision on ➲ […] ➲ non-renewal ➲ or withdrawal ➲ .

7. Member States may determine in their national legislation the consequences of the withdrawal of the approval or refusal to renew the approval for the existing hosting agreements, concluded in accordance with Article ~~6~~9, as well as the consequences for the residence permits of the researchers concerned.

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↓ 2005/71/EC (adapted)
➲ Council

*Article ~~6~~9*

**Hosting agreement**[130]

[130] **DE**, **NL, EL, ES, AT, BE:** scrutiny reservation. **ES, DE** wanted as much flexibility for Member States as possible, since even minimum mandatory requirements could harm the recruitment of researchers. **DE** stated that research organisations in its territory do not use hosting agreements and this article could bring some problems for them. **NL** argued, in the same line than **DE**, that the complex admission procedure would have negative effects for the admission of researchers. **AT** preferred to go back to the old version as proposed by **CION**. **BE** was of the opinion that these provisions are a little too flexible. **BE** was concerned about the mobility implications. **PL** stated that the content should be mandatory in the agreement and that the simplifications have gone too far. **EL** was of the opinion that the hosting agreement should be left, if possible, free of any elements that require a contractual relationship, in the framework of a specific research project, between the researcher and the host organisation. According to **EL** various cases have been reported that third-country researchers (e.g. Brazilians) are funded by national sources to complete part of their research activities (usually in the framework of doctoral studies) in a foreign country. Consequently, the research organisation has not other legal obligation (remuneration, social security, pension coverage, etc.) than to incorporate the researcher to its research activity. Thus, in this cases, the hosting agreement might be transformed into a commitment of the host organisation that will integrate, for a certain period of time, the researcher to its research initiatives. The researcher should have in his/her possession an official document by his/her funding source declaring, officially, that they will cover all of his/her stay for research purposes abroad. If hosting agreements were to be necessarily linked to research projects, then a specific provision should be foreseen for third-country researchers that are accepted on European research organisations on the basis that researchers will cover all their costs during their stay in the EU for research purposes. **CION** said that it prefers the text as it was originally proposed by them. As other delegations mentioned, there should be some elements in the hosting agreements that should be mandatory. According to **CION**, there are already some elements which are obligatory in the current Directive on researchers, so it would not agree to lessen the minimum binding provisions.

1. A research organisation wishing to host a researcher shall sign a hosting agreement with the latter ➲ without prejudice to ➲ ~~whereby the researcher undertakes to complete the research project and the organisation undertakes to host the researcher for that purpose without prejudice to Article~~ ⌦ ➲ […] ➲ Articles 6 and ⌫ 7 ⌦ ➲ […] ➲ ⌫.[131]

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⇩ new
➲ Council

➲ 1a. ➲ […] ➲ Member States shall require the hosting agreement[132] to contain ➲[133] :

(a) the title ➲ […] ➲ or ➲ purpose[134] of the research ➲ […] ➲ activity ➲ ;

(b) ➲ […] ➲ an undertaking by the researcher to endeavour to complete the research activity for which she or he has been admitted; ➲

(c) ➲ an undertaking by the organisation to host the researcher; ➲[135]

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131 **NL** stated that it would like the reference to Articles 6 and 7 in this paragraph to be deleted since it seems to impose on the research organisation an obligation to monitor whether the conditions laid down in those articles are respected. **NL** was of the opinion that this is not something for the research organisations to do. **ES** considered that the notions of "financial means" and "health insurance" should also be included in the points of this first paragraph.

132 **ES** requested to include the possibility of also using a "*contract*" besides the hosting agreement.

133 **DE, FI** stated that a mere agreement should suffice, not thinking that any requests of titles and further information improves anything. Therefore they would prefer to delete the whole paragraph 1a, or at least to make it a "may" provision.

134 **FR** was on the opinion that the purpose is more important than the title, so the title could be deleted and only mention the purpose.

135 **SE** preferred the text that was originally proposed by the **CION**.

(d) the start and end date ➲ or the estimated duration ⊂ of the research ➲ […] ⊂ ➲ activity ⊂ ;

➲ Member States may also require the hosting agreement to contain: ⊂

➲ […] ⊂➲ (a) ⊂ information on the legal relationship between the research organisation and the researcher;[136]

➲ […] ⊂➲ (b) ⊂ information on the working conditions of the researcher ➲ in accordance with the national law of the Member States concerned ⊂ .[137]

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| 🡻 2005/71/EC<br>➲ Council |

2. Research organisations may sign hosting agreements only if ➲ […] ⊂ ➲ […] ⊂ the research ➲ […] ⊂ ➲ activity ⊂ has been accepted by the relevant authorities in the organisation, after examination of:

(i) the purpose and ➲ estimated ⊂ duration of the research, and the availability of the necessary financial resources for it to be carried out;

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136 **NL** was of the opinion that this description is vague in the NL version of the text.

137 **NL** also thought that this description is vague in the NL version of the text. Therefore, **NL** requested further clarification. **FR** stated that the wording « information on the working conditions of the researcher » lacks of precision. Furthermore, information on the working conditions is available in the working contract or the trainee agreement. **FR** proposes to delete point f) or to add the following: *"*information on the working conditions of the researcher *that is specified in the hosting agreement or a specific agreement between the host entity and the researcher"*. **SE** suggested to add the following: *"[...] in accordance with the national law or practice of the Member States concerned."*

(ii) the researcher's qualifications in the light of the research objectives, as evidenced by a certified copy of his/her qualification in accordance with Article ➲ 3 ➲ […] ➲ ~~(d)~~(b);

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↓ 2005/71/EC (adapted)

~~(b) during his/her stay the researcher has sufficient monthly resources to meet his/her expenses and return travel costs in accordance with the minimum amount published for the purpose by the Member State, without having recourse to the Member State's social assistance system;~~

~~(c) during his/her stay the researcher has sickness insurance for all the risks normally covered for nationals of the Member State concerned;~~

~~(d) the hosting agreement specifies the legal relationship and working conditions of the researchers.~~

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↓ 2005/71/EC
➲ Council

3. ➲ […] ➲

4. The hosting agreement shall automatically lapse when the researcher is not admitted or when the legal relationship between the researcher and the research organisation is terminated.

5. Research organisations shall promptly inform the authority designated for the purpose by the Member States of any occurrence likely to prevent implementation of the hosting agreement.[138]

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| ↓ 2004/114/EC (adapted) |
| ➲ Council |

*Article ~~7~~ 10*

**Specific conditions for students[139]**

1. In addition to the general conditions laid down in Article 6, a third-country national who applies to be admitted for the purpose of study shall:

(a) ⌦ provide evidence that he/she has ⌫ ~~have~~ been accepted by a ➲ […] ➲ ➲ higher education institution ➲ to follow a course of study;[140]

(b) ~~(d)~~ provide evidence, if the Member State so requires, that he/she has paid the fees charged by the ➲ […] ➲ ➲ higher education institution ➲ ~~.~~ ;

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138 **DE, ES** had doubts about the information requirement stipulated in this paragraph. They considered it to impose an extra administrative burden on Member States.

139 **FI**, **AT**: scrutiny reservation. **ES** would like to include a specific reference to "*means of subsistence*" in this article. **PRES** invited **ES** to clarify this in writing.

140 **FR** requested the inclusion of a "*formation continue*" system as the one currently applied in its territory. **FI** was of the opinion that this point should also include courses other than those pertaining to higher education.

~~(b) provide the evidence requested by a Member State that during his/her stay he/she will have sufficient resources to cover his/her subsistence, study and return travel costs. Member States shall make public the minimum monthly resources required for the purpose of this provision, without prejudice to individual examination of each case;~~[141]

(c) provide evidence, if the Member State so requires, of sufficient knowledge of the language of the course to be followed by him/her;. [142]

➲ (d) if the Member State so requires, provide evidence requested by the Member State that he/she will have sufficient resources to cover his/her study costs. ➲[143]

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141 **CION** clarified that this point was deleted because its content has been introduced in other provisions (Articles 6 and 30) of this proposal. **AT** acknowledged that this content is now in Article 6(1)(f) but criticised that this provision in Article 6(1)(f) is not consistent with other migration instruments, like the Seasonal Workers Directive proposal in which, for instance, the concept of "*not having recourse to social assistance*" is included, while in Article 6(1)(f) is lacking.

142 **IT** suggested the inclusion of a new paragraph which would allow Member States to provide for basic language training in the host country: "*In case the student cannot prove that he/she possesses the requirement provided for in paragraph 1, point (c), and when Member States foresee it, the student can benefit from basic language training in the host Member State*".
**AT** inquired whether Member States could request language certificates in this context to which **CION** suggested that the European Framework for Languages may be used as a point of reference with regard to language knowledge.

143 **AT**: scrutiny reservation. **SE** asked clarification on what "study costs" means and why it is requested for evidence to be provided and welcomed that this provision had become voluntary. **CION** wondered whether this point (d) is not already covered by Article 6. **HU** disagreed and pointed out that Article 6 covers every category while in this point we are dealing with study costs which only applies to those who want to study in education institutions. **HU** therefore believed that these should stay in the specific conditions. **NL** stated that the fees in Article 6 are fees paid for application process while here the fees are paid to the education establishment, so **NL** was of the opinion that they are two different categories of fees.

2. Students who automatically qualify for sickness insurance ~~in respect of~~ ⌦ for ⌫ all risks normally covered for the nationals of the Member State concerned as a result of enrolment at a ➲ […] ➲ higher education institution ➲ shall be presumed to meet the condition laid down in Article 6(1)(c).[144]

~~*Article 8*~~

~~**Mobility of students**~~

~~1. Without prejudice to Articles 12(2), 16 and 18(2), a third-country national who has already been admitted as a student and applies to follow in another Member State part of the studies already commenced, or to complement them with a related course of study in another Member State, shall be admitted by the latter Member State within a period that does not hamper the pursuit of the relevant studies, whilst leaving the competent authorities sufficient time to process the application, if he/she:~~

~~(a) meets the conditions laid down by Articles 6 and 7 in relation to that Member State; and~~

~~(b) has sent, with his/her application for admission, full documentary evidence of his/her academic record and evidence that the course he/she wishes to follow genuinely complements the one he/she has completed; and~~

~~(c) participates in a Community or bilateral exchange programme or has been admitted as a student in a Member State for no less than two years.~~

144 **FR** requested an addition to this paragraph in order to enable Member States to apply their national systems. **FR** currently excludes students over the age of 28 from sickness insurance.

~~2. The requirements referred to in paragraph 1(e), shall not apply in the case where the student, in the framework of his/her programme of studies, is obliged to attend a part of his/her courses in an establishment of another Member State.~~

~~3. The competent authorities of the first Member State shall, at the request of the competent authorities of the second Member State, provide the appropriate information in relation to the stay of the student in the territory of the first Member State.~~

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| ↓ 2004/114/EC (adapted)<br>➲ Council |
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*Article ~~9~~11*

**Specific conditions for school pupils**

1. ~~Subject to Article 3,~~ ~~a~~ A third-country national who applies to be admitted in a pupil exchange scheme ➲ or educational project[145] ➲ shall, in addition to the general conditions ~~stipulated~~ ⌦ laid down ⌫ in Article 6:[146]

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145 **FR** thanked for the inclusion of "educational project" and **AT** said that a definition is needed.

146 **FR** suggested the following changes: "*A third-country national who applies to be admitted in a pupil exchange scheme or a pedagogical project which requires mobility shall […]*"

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| ↓ 2004/114/EC<br>➲ Council |

(a) not be below the minimum age ➲ or grade ⊂ nor above the maximum age ➲ or grade ⊂ set by the Member State concerned ➲ , insofar as this has been established by the Member State ⊂ ;[147]

(b) provide evidence of acceptance by an ➲ […] ⊂ education establishment;

(c) provide evidence of participation in a ➲ […] ⊂ pupil exchange scheme ➲ or educational project ⊂ ➲ […] ⊂ ➲ recognised by the Member State and ⊂ operated by a ➲ […] ⊂ ➲ host entity or agent ⊂ ➲ […] ⊂ in accordance with its national legislation or administrative practice;[148]

(d) provide evidence that the ➲ […] ⊂ ➲ host entity ⊂ accepts responsibility for him/her throughout his/her period of presence in the territory of the Member State concerned, in particular as regards ➲ […] ⊂ ➲ study costs ⊂ ;[149]

147 **FR** proposed that the age should be expressly stated since this is important for insurance coverage.

148 **ES**: scrutiny reservation. **DE** would also like to introduce the notion of "*reciprocity*". **CION** pointed out on "reciprocity" that in the Member States where this optional provision has been transposed no relevant issues have arisen.

149 **FR** suggested the following changes: "*provide evidence that the pupil exchange organisation and/or the pedagogical project accepts responsibility for him/her throughout his/her period of presence in the territory of the Member State concerned, in particular as regards subsistence, study, healthcare and return travel costs;*".
**DE** suggested the following changes:
*"provide evidence that the host entity, the agent or – as far as provided for by national law - a third party accepts responsibility […]"*

(e) be accommodated throughout his/her stay by a family ➲ or a special accommodation facility within the education establishment ➲ meeting the conditions set by the Member State concerned and selected in accordance with the rules of the pupil exchange scheme ➲ or educational project ➲ in which he/she is participating.[150]

➲(f) provide evidence, if the Member State so requires, of sufficient knowledge of the language of the studies to be followed by him/her. ➲

2. Member States may confine the admission of school pupils participating in an exchange scheme ➲ or educational project ➲ to nationals of third countries which offer the same possibility for their own nationals.

[150] **DE** suggested the following changes:
*"be accommodated throughout his/her stay by a family or a special accommodation facility within the education establishment or – as far as provided for by national law - any other facility meeting the conditions set by the Member State concerned [...]"*

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| ↓ 2004/114/EC (adapted) |
| ⇨ new |
| ➲ Council |

*Article ~~10~~12*

**Specific conditions for ~~unremunerated~~ ➲ unremunerated and remunerated ⊂ trainees**[151]

1. ~~Subject to Article 3,~~ ~~a~~ A third-country national who applies to be admitted as an unremunerated ⇨ or remunerated ⇦ trainee shall, in addition to the general conditions laid down in Article 6:

[151] **LV** could support the admission of trainees only under licensed education programmes and providing they are students or pupils. **RO** objected to the merging of unremunerated and remunerated trainees in the same category since the former is a category closer to students and the latter is a category closer to employees, which have access to the labour market. **PL, IT, LT** and **PT** also pointed out that it is very difficult to differentiate remunerated trainees from employees. **PL** stated that it does not agree with remunerated trainees not being subject to the labour market test. **PT** pointed out that in its national legislation there is a difference between "traineeship" which is paid and "vocational training" which is not paid. **BE** proposed that accommodation and assumption of responsibility by the organisation should be also added as conditions.

(a) have signed a ➲ […] ➲ trainee ➲ agreement, ➲ which provides for a theoretical and practical training and is ➲ approved if need be by the relevant authority in the Member State concerned in accordance with its national legislation or administrative practice, for ~~an unremunerated~~ ⌦ a ⌫ ➲ […] ➲ ➲ traineeship with a host entity ➲ ,[152] ➲ The agreement shall describe the training programme, specify its duration, placement conditions under which the traineeship will be carried out, the conditions under which the trainee is supervised in the performance of this programme, his/her traineeship hours, the legal relationship with the host entity and, where the trainee is paid, the payment granted to him/her. Member States shall[153] require the terms upon which the trainee agreement has been based and concluded to meet requirements established in national law or practice. ➲[154]

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152 **AT**: scrutiny reservation.
**DE:**
**-** requested clarification on the meaning of the wording: "[…] in accordance with its national legislation or administrative practice […]".
- wanted to know whether a labour market test could be done under this wording.
- also asked to know what it is meant by "relevant authority".
- wanted clarification on whether vocational training would be included as a form of traineeship, in which case, **DE** would object.

153 **PRES** stated that it would like to present a "*may*" instead of "shall" in a future document. **CION** stated that it can support the change to "may".

154 **AT**: scrutiny reservation. **ES** presented a reservation since it does not think this last part should be included.

⇩ new

➲ Council

(b) prove, if the Member State so requires, that they have previous relevant education or qualifications or professional experience to benefit from the ➲ […] ➲ ➲ training ➲ experience.[155]

➲ (ba) provide the evidence requested by the Member State that during his/her stay he/she will have sufficient resources to cover his/her training costs [156]; ➲

[155] **ES**: scrutiny reservation. **DE** was critical of this provision, specially given the uncertainty as to the possibility of performing a labour market test. **DE** explained that it does not currently admit trainees with low-level qualifications. **LT** supported **DE**'s comments about the possibility of this article being interpreted in a way that unskilled workers will have access to the labour market. **AT** stated that the mere evidence of relevant education or relevant qualifications or experience, as required in this point, may not exclude the use of unskilled workers as "trainees" according to this proposal. **AT** thinks this is particularly true in cases where the underlying agreement is not an education agreement, but merely a training programme which may include any practical activity.

[156] **AT, DE, BE, PT, ES, SE, IT, FR**: scrutiny reservation. **SE** asked more information about what "training costs" entails. **PRES** answered that the wording "training costs" was in he original **CION** proposal in Article 6, and it just has been moved to Article 12. **AT** requested clarification about whether "training costs" have to be considered in addition to adequate means, to which **PRES** answered that "training costs" are to be understood as in addition to adequate means. **CION** explained that "training costs" could encompass costs of materials like for example the books.

↓ 2004/114/EC

~~(b) provide the evidence requested by a Member State that during his/her stay he/she will have sufficient resources to cover his/her subsistence, training and return travel costs. The Member States shall make public the minimum monthly resources required for the purpose of this provision, without prejudice to individual examination of each case;~~

↓ 2004/114/EC
➲ Council

(c) ➲ prove that he/she has received or will ➲ receive, if the Member State so requires, ➲ […] ➲ ➲ appropriate ➲ language training so as to acquire the knowledge needed for the purposes of the ➲ […] ➲ ➲ traineeship ➲ .[157]

[157] **AT** stated that it is not clear who decides if the condition has been fulfilled. **PRES** answered that it is the Member State that decides. **AT** also pointed out that DE version should use a different term when referring to trainees to avoid further confusion. **DE** criticised this point since it is not clear whether the third-country national is required to have some knowledge already of the language.

⇩ new
➲ Council

➲ […] ➲

2. ➲ […] ➲ ➲ Member States may require the training programmes referred to in paragraph 1 to be licensed in accordance with national law. ➲ [158]

🡻 2004/114/EC (adapted)
➲ Council

*Article ~~11~~13*

**Specific conditions for volunteers[159]**

~~Subject to Article 3, a~~ ➲ 1. ➲ A third-country national who applies to be admitted to a voluntary service scheme shall, in addition to the general conditions laid down in Article 6:

158 **DE, FI, SI, EL, AT, PT, NL** found that this provision is insufficient to prevent abuses. All of them were also of the opinion that a labour market test should be possible under this provision. **CION** stated that this paragraph opens too widely the possibility for Member States to have parallel schemes, so **CION** did not agree with this. **SE, DE** preferred the earlier version of this paragraph.

159 **AT, CY** specified that if the mandatory extension to cover volunteers is provided for, the Member States must be given at least the opportunity to set a quota. **NL** stated that there is a big risk of abuse, since volunteers could be used to fill employees' jobs. **DE** already has national legislation dealing in detail with this category and it does not see the need to make this category mandatory at EU level.

~~(a) not be below the minimum age nor above the maximum age set by the Member State concerned;~~ ➲ (a) where required under a Member State's national law, not be below the minimum age nor above the maximum age[160] set by the Member State concerned; ➲

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| ↓ 2004/114/EC<br>➲ Council |
|---|

➲ […] ➲ ~~(b)~~ ➲ (b) ➲ produce an agreement with the ➲ […] ➲ ➲ host entity ➲ responsible in the Member State concerned for the voluntary service scheme in which he/she is participating, giving a description of tasks ➲ and actions to be performed by him/her, the placement conditions for carrying out such tasks and actions ➲ , the conditions in which he/she is supervised in the performance of those tasks, his/her ➲ […] ➲ ➲ volunteering ➲ hours, ➲ […] ➲ ➲ the obligation of the host entity to cover his/her ➲ accommodation ➲ […] ➲ ➲ costs ➲ and pocket money throughout his/her stay and, if appropriate, the training he/she will receive to help him/her perform his/her service;[161]

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160 **ES** expressed its reservation against the reference "the maximum age".

161 **DE**: scrutiny reservation. **ES** stated a reservation since it does not think this should be mandatory. **IT** proposed an alternative wording for this point: *"show a contract signed with the social utility and non-profit organisation which promotes the chosen voluntary action and/or active citizenship scheme in the concerned Member State, that specifies the tasks and actions to be performed by the volunteer, the placement conditions for carrying out such tasks and actions, his/her schedule, the financial resources allotted for the reimbursement of expenses -effectively incurred- for the trip, meals and accommodation during the whole stay as well as, if provided for in the volunteer's scheme, the training he/she will receive as a support for performing his/her tasks".*
**DE** suggested the following changes:
*"produce an agreement with the host entity, agent or other institution responsible in the Member State […]"*
**SE** was of the opinion that this paragraph should have the same wording than in Article 12(1)(e).

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| ↓ 2004/114/EC<br>➲ Council |

➲ […] ⊂ ~~(e)~~ ➲ (c) ⊂ provide evidence that the ➲ […] ⊂ ➲ host entity ⊂ responsible for the voluntary service scheme in which he/she is participating has subscribed to a third-party insurance policy; ~~and accepts full responsibility for him/her throughout his/her stay, in particular as regards his/her subsistence, healthcare and return travel costs;~~[162]

[162] **ES**: scrutiny reservation. **PL, RO, IT, AT, CY** did not agree with the last part of this point being deleted and wanted it to be reinserted. The risks of civil liability are low, and therefore it is reasonable that the insurance covers more (subsistence, healthcare and return travel costs). **AT** added that the organisation of the volunteer programme does not only have liability, but it also has to meet other responsibilities regarding compliance with the national legislation of the Member States, in particular regarding the subsistence, healthcare and return travel costs of the third-country national. **IT** proposed an alternative wording for this point: *"prove that the organisation promoting the volunteers' scheme has taken out a public liability insurance with regard to the individuals entering as volunteers"*.
**DE** suggested the following changes:
*"provide evidence that the host entity, agent or other institution, [...]"*

| 🡻 2004/114/EC<br>➲ Council |
|---|

~~(d)~~ ➲ […] ➲ (d) ➲ provide evidence ➲ , if the host Member State specifically requires it, ➲ that he/she will ➲ receive a basic introduction to the language, history and political and social structures of that Member State.[163]

| ⇩ (new)<br>➲ Council |
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*Article 14*

**Specific conditions for au-pairs**[164]

➲ 1. ➲ A third-country national who applies to be admitted for the purpose of working as an au-pair shall, in addition to the general conditions laid down in Article 6:

163 **FR** sought more information from **CION** on whether the basic introduction to the language, history and political and social structures of the Member State would take place prior to or during the volunteering period. **FR** also inquired on who would bear the costs of such introduction. **CION** answered that this is up to Member States to regulate.

164 **PL**: linguist reservation concerning the term "au-pairs". **AT** expressed a reservation due to problems with the subsidiarity principle and the legal basis, as well as to the fact that experience shows that this group is prone to abuse and circumventing activities. **AT** also pointed out that Member States need to have the opportunity to refuse to grant residence where any suggestion exists that the purpose of stay actually pursues a different aim than the one foreseen in this proposal. **FI** stated that it considers au-pairs as employees and therefore this should be better reflected in this article.

➲ […] ⊂ ➲ (a) ⊂ produce an agreement between the au-pair and the host family ➲ or agent ⊂ defining his/her rights and obligations, including specifications about ➲ the amount of ⊂ the pocket money[165] to be received, ➲ […] ⊂ adequate arrangements allowing him/her to attend courses ➲ referred to in Article 3(i) and the maximum hours of ⊂ ➲ […] ⊂ participation in day-to-day family duties;

➲ […] ⊂➲ (b) ⊂ be ➲ […] ⊂ ➲ of the age[166] required under the national law of the Member State; ⊂[167]

➲ […] ⊂➲ (c) ⊂ provide evidence that the host family ➲ or agent ⊂ accepts responsibility for him/her throughout his/her ➲ […] ⊂ ➲ stay ⊂ in the territory of the Member State concerned, in particular with regard to ➲ […] ⊂ accommodation ➲ […] ⊂and ➲ […] ⊂ accident risks;[168]

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165 **SE** did not agree with the use of the term "pocket money" and requested it to be replaced for another concept, for example "*allowance*" or "*remuneration*".

166 **FR, HU, BE** wanted to introduce an age range. Member States then can decide but at least there would be some idea of the range in which Member States are working.

167 **FI** pointed out that it has not a requirement about age in its legislation. **SE** requested to delete the reference to "national law" in this point. **CION** stated that it is in favour of a minimum harmonisation of age in the form of a "bracket of ages" while, for the sake of flexibility, still allowing for exceptions.

168 **CZ** stated that the costs of health care should be borne by the au-pair and that this should be explicitly stipulated in the text.
**DE** suggested the following changes:
*"provide evidence that the host family, the agent or – as far as provided for by national law - a third party accepts responsibility […]"*

➲ 2. Member States may require the third-country national who applies to be admitted as an au-pair to provide evidence:

(a) of basic knowledge of the language of the host country; or

(b) that she or he has secondary education, professional qualifications or, where applicable, fulfils the conditions to exercise a regulated profession[169], as required by the national law of the Member State concerned.

3. Member States may require the members of the host family to be of different nationality than the third-country national who applies to be admitted for the purpose of working as an au-pair and not to have any family links with the third-country national concerned.[170]

4. The maximum length of performance of the au-pair duties by the third-country national, as foreseen in the agreement referred to in the paragraph 1 (a), shall not exceed 20 [171] hours per week. The third-country national shall have at least one day per week free of au-pair duties.

5. Member States may[172] set a minimum amount of pocket money to be paid to the third-country national according to the paragraph 1 (a). ➲

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169 **IT** found this mention to "regulated profession" problematic, since regulated professions correspond to specific arrangements. **PRES** explained that in at least one Member State, au-pairs are considered as a regulated profession and this is the reason for this inclusion.

170 **ES**: scrutiny reservation. **SE, FI, PT, BE** stated that the issues of nationality should be deleted since it could give rise to some legal questions. **DE** stated that even if it could understand the concerns expressed by other delegation, it is in favour of keeping this provision. **HU** was against the concepts of "nationality" and "family link". It asked more information about what "family link" means exactly. **CION** agreed with **HU** on the issue of "nationality" and "family link".

171 **DE, AT** preferred *30* hours per week instead of 20. **IT** preferred to leave to Member States to define the number of hours, and alternatively **IT** would support *30* hours per week since it finds 20 hours too low of a requirement. **BE**, on the other hand, stated that it does not support 30 hours per week as suggested by the other delegations.

172 **BE** stated that this paragraph should be mandatory and not optional.

↓ 2005/71/EC

~~*Article 9*~~

~~**Family members**~~

~~1. When a Member State decides to grant a residence permit to the family members of a researcher, the duration of validity of their residence permit shall be the same as that of the residence permit issued to the researcher insofar as the period of validity of their travel documents allows it. In duly justified cases, the duration of the residence permit of the family member of the researcher may be shortened.~~

~~2. The issue of the residence permit to the family members of the researcher admitted to a Member State shall not be made dependent on the requirement of a minimum period of residence of the researcher.~~

⇩ new

➲ Council

# CHAPTER III

# AUTHORISATIONS AND DURATION OF RESIDENCE[173]

[173] **ES**: scrutiny reservation on the whole chapter.

*Article 15*

**Authorisations**[174]

➲ 1. When the authorisation is in form of a residence permit, under the heading "type of permit", in accordance with point (a) 6.4 of the Annex to Regulation (EC) No 1030/2002, Member States shall enter "researcher", "student", "volunteer", "school pupil"[175], "remunerated trainee", "unremunerated trainee" or "au pair". ➲

➲ 2. When the authorisation is in form of a long-stay visa[176], Member States shall enter a reference stating that it is issued to the "researcher", "student", "volunteer", "school pupil", "remunerated trainee", "unremunerated trainee" or "au pair" under the heading "remarks" on the visa sticker. ➲

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174 Concerning the inclusion of codes (numerical, acronyms):
- In favour: **CZ, PT**
- Against: **SE, DE, NL, AT, IT, CION**
- Scrutiny reservation: **PL**

**NL, AT, DE**: scrutiny reservation on the whole article.
**DE,** supported by **AT**, did not agree with the new wording in this provision and preferred the original wording. **PL, LV** agreed with and supported these changes. According to **PL**, previous wording seemed to introduce a new residence permit when it is not the case. **CION** answered that its proposal does not refer to a new type of permit and that in its opinion the original proposed text was already clear that the permit was not a new one. **FR** advocated for the extension of the target audiences of this proposal, in order to regularize the situation of young people working in the context or a « *youth exchange programs for non-academic accomplishments*» and of « *youth workers for training visits and networking* ».

175 **HU** did not agree with the mention of "school pupils" since it would like to extend the scope to other types of pupils. **PRES** asked **HU** to produce its request in writing.

176 **HU** wanted to make sure that this is not about the entrance visa but a long-term visa. **HU** also stated that it would be useful to have a reference in this article to Article 24(3) of this proposal.

➲ […] ➲

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| ↓ 2005/71/EC (adapted) |
| ⇨ new |
| ➲ Council |

*Article ~~8~~ 16*

**Duration of ➲ […] ➲ ➲ authorisation ➲ ~~permit~~** [177]

➲ 1. Member States shall issue an authorisation for a third-country national for whom the competent authorities have taken a positive decision in accordance with the relevant provisions of this Directive, and when there are no relevant grounds provided for in Articles 18 and 19. ➲

➲ […] ➲➲ 2. The period of validity of ➲ ➲ […] ➲ ⇨ an authorisation for researchers ⇦ ➲ shall be of ➲ ➲ […] ➲ at least one year ➲ or the duration of the research activity, whichever is shorter, and shall be renewed ➲ ➲ […] ➲ if the conditions laid down in Articles 6, ~~and~~ 7 ⌦ and 9 ⌫ are still met. ➲ […] ➲ [178]

[177] **IT, AT**: scrutiny reservation on the whole article. **BE** stated that the definition of and references to authorisation need to be improved.

[178] **AT, ES**: scrutiny reservation. **RO** put this paragraph in relation with Article 4(2) of this proposal and wondered whether the new wording would respect the national rules of Member States that stipulate the Member State can give an authorisation for the duration of the research activity. **PRES** clarified to the questions from some delegations that the changes in paragraphs 2 and 3 are structural and not intented to change the substance and that as long as the conditions are met, the authorisation can be renewed.

⇩ new

➲ Council

➲ […] ⊂➲ 3. The period of validity of ⊂ ➲ […] ⊂ an authorisation for students ➲ […] ⊂ ➲ shall be ⊂ of at least one year[179] ➲ or the duration of studies, whichever is shorter, and shall be renewed ⊂ ➲ […] ⊂ if the conditions laid down in Articles 6 and 10 [180] are still met.[181]

➲ 4. By way of derogation from paragraphs (2) and (3), researchers and students who are covered by EU, bilateral or multilateral programmes that comprise mobility measures, shall be issued an authorisation[182] covering the whole duration of their stay[183] in the Member State participating in the programme. ⊂

179 **CZ** suggested to make reference to "*academic year*" or "*semester*" instead of "one year".

180 **AT** stated that Article 19 should also be included.

181 **FR** suggested that if the propositions presented under articles 3 and 11 are to be taken into account, this article would also have to be coherent with the addition of two new target audiences :
"*Member States shall issue an authorisation for the duration of the exchange program for third country national involved in a non-academic project operated by a youth structure recognised for that purpose by the Member State, and for « youth workers for training visits and networking »*".

182 **PL** requested clarification about whether this paragraph indicates that the authorisation is going to be issued by the first Member State or by the Member State in which the third-country national is going to stay most of the time. **PRES** answered that if necessary, this paragraph could be revised in the sense that it is stipulated that the first Member State issues the authorisation.

183 **AT, SE, ES, FI**: scrutiny reservation. **DE, AT, SE, ES, FI** were of the opinion that the length of the stay should be more flexible. It should be possible to have a shorter authorisation and then give the possibility of an extension. An authorisation that covers several years takes away the possibility for Member States to check whether the conditions (e.g. the required sufficient resources or accommodation) are still fulfilled after several years. **AT, DE** advocated for the introduction of a time limit in this paragraph. According to them there should be a maximum time duration placed in this paragraph. **IT**, on the other hand, informed that it recently adopted a piece of legislation by which the duration of the authorisation is tied to the duration of the stay. **IT** agrees therefore to extend this at the Union level. **NL** also welcomed this paragraph.

➲ 5. The period of validity of an authorisation for school pupils shall be of at least one year or the duration of studies, whichever is shorter, and shall be renewed if the conditions laid down in Articles 6 and 11 are still met. ⊂[184]

➲ […] ⊂ ➲ 6. ⊂ ➲ […] ⊂ ➲ The period of validity of an authorisation for ⊂ au pairs ➲ […] ⊂ ➲ shall be of ⊂ a maximum period of one year[185]. ➲ Member States may decide that this authorisation shall not be renewable. ⊂

184 **NL** stated that one year is more than adequate, did not agree with the possibility of renewal and would like to change "shall" for "*may*". **FR** wanted the length of the residence permit to match the period of study. **SE, BE, DE, SI** preferred the text in the existing Directive and the originally proposed **CION** text ("*Member States shall issue an authorisation for a maximum period of one year*"). According to **SE**, there is no need to grant longer permits than one year, given that it concerns exchanges of studies. In addition, Member States are according to Article 4 allowed to adopt or maintain more favourable provisions. In the alternative, **SE** could consider stating that a permit shall be granted for a maximum of one year while allowing extensions in special circumstances. **AT** wanted to point out the link of this paragraph with Article 19 of this proposal.

185 **ES** expressed its reservation on the duration of residence for au-pairs since it does not agree with the inclusion of this category in the proposal. **FR** wanted the length of the residence permit to match the period of study. **DE** thought that one year is too much since au-pairs are allowed to stay significantly less in **DE**. **AT** supported **DE**. **LU** liked the wording suggested by **PRES** since it is that way already in their legislation.

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| 🡻 2004/114/EC (adapted)<br>⇨ new<br>➲ Council |

➲ […] ⊂ ➲ 7. ⊂ The period of validity of an ~~residence permit~~ ⇨ authorisation ⇦ ➲ […] ⊂ ➲ for ⊂ ~~unremunerated~~ ➲ unremunerated and remunerated ⊂ trainees shall ➲ […] ⊂ ➲ be of ⊂ maximum of one year. In exceptional cases, it may be renewed, once only ⇨ ➲ […] ⊂ ⇦ and exclusively for such time as is needed to ➲ […] ⊂ ➲ complete the traineeship, insofar as this is provided for in national law ⊂ ➲ […] ⊂ .[186]

➲ […] ⊂ ➲ 8. ⊂ ➲ The period of validity of ⊂ an ⇨ authorisation ⇦ ~~residence permit~~ ➲ […] ⊂ ➲ for ⊂ volunteers shall be ➲ […] ⊂ ➲ of ⊂ one year ➲ at the most ⊂ . ➲ […] ⊂ ➲ When allowed under national law ⊂ , if the duration of the relevant programme is longer than one year, the duration of the validity of the ⇨ ➲ […] ⊂ ⇦ ~~residence permit~~ ➲ authorisation ⊂ may correspond to the period concerned.[187]

➲ 9. Member States may determine that, where the validity of the travel document of the third-country national is shorter than one year, the validity of the requested authorisation will not go beyond the validity of the travel document. ⊂[188]

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186 **DE, AT, ES**: scrutiny reservation. **PL, FR** wanted the authorisation to cover the whole duration of the traineeship. **AT** wanted to point out the link of this paragraph with Article 19 of this proposal.

187 **DE, AT, ES**: scrutiny reservation. **SK** preferred "*shall*" instead of "may". **AT** wanted to point out the link of this paragraph with Article 19 of this proposal.

188 **ES, PL, HU**: scrutiny reservation. **AT** welcomed the insertion of this paragraph.

➲ […] ➲ 10. ➲ In cases where Member States allow entry and residence ➲ during the first year ➲ on the basis of a long-stay visa, a residence permit shall be issued with the first extension of the initial stay ➲ if the conditions laid down in Article 6 and, ➲ where relevant, Articles ➲ 7, 9, 10, ➲ 11, ➲ 12, 13 ➲ or 14 ➲ are still met ➲ . ➲ […] ➲[189]

*Article 17*

**Additional information**[190]

➲ 1. ➲ Member States may indicate additional information related to the stay ➲ […] ➲ ➲ and, in cases covered by Article 23, the economic activities ➲ of the third-country national, such as the full list of Member States that the researcher or student intends to go to ➲ or a specific EU, bilateral or multilateral programme that comprises mobility measures ➲ , in paper format, ➲ […] ➲ or store such data in electronic format as referred to in Article 4 of Regulation (EC) No 1030/2002 and in point (a) 16 of the Annex thereto.[191]

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189 **CZ**: scrutiny reservation, the long-stay visa should remain a matter for the Member States to regulate. **HU** pointed out that this paragraph refers to long-stay visas and not to entry visas, which are linked to residence permits, and therefore asked whether this apply to non-Schengen countries that have competence for visas. **AT** welcomed the deletion of last sentence on this paragraph. **PL**, **DE** supported the changes made to this paragraph. **BE** would like to obtain some clarifications from **PRES** concerning this paragraph: is it still possible to deliver a long-stay visa for a period inferior to a year (for example 4 months) and following this period deliver a residence permit? According to **BE**, the expression "during the first year" could imply that only long-stay visas of one year could be delivered. **CION** would like to keep the text as proposed or at least would like to have a text in which people do not need to submit again an application. **CION** would like to distinguish between an application to enter the territory and an application to renew the authorisation. **CION** made a reservation about the deletion of the last part of the paragraph.

190 **AT, DE, HU, ES**: scrutiny reservation. AT stated that it would like a reference to recital 23 in this article.

191 **FR** was of the opinion that additional information should be included in the visa or permit and that this should be explicitly stated in this article. Concerning the list of Member States mentioned in this article, **FR** also pointed out that for stays below 3 months such a list is not necessary.

➲ 2. Member States may also indicate the information referred to in paragraph 1 on a long-stay visa, as referred to in point 12 of the Annex to Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas. ➲

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↓ 2004/114/EC (adapted)

## CHAPTER IV[192]

## ~~RESIDENCE PERMITS~~ ⌦ GROUNDS FOR REFUSAL, WITHDRAWAL OR NON-RENEWAL OF AUTHORISATIONS ⌫

~~*Article 12*~~

~~**Residence permit issued to students**~~

~~1. A residence permit shall be issued to the student for a period of at least one year and renewable if the holder continues to meet the conditions of Articles 6 and 7. Where the duration of the course of study is less than one year, the permit shall be valid for the duration of the course.~~

~~2. Without prejudice to Article 16, renewal of a residence permit may be refused or the permit may be withdrawn if the holder:~~

~~(a) does not respect the limits imposed on access to economic activities under Article 17;~~

~~(b) does not make acceptable progress in his/her studies in accordance with national legislation or administrative practice.~~

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192 **ES**: scrutiny reservation on the whole chapter.

~~*Article 13*~~

~~**Residence permit issued to school pupils**~~

~~A residence permit issued to school pupils shall be issued for a period of no more than one year.~~

~~*Article 14*~~

~~**Residence permit issued to unremunerated trainees**~~

~~The period of validity of a residence permit issued to unremunerated trainees shall correspond to the duration of the placement or shall be for a maximum of one year. In exceptional cases, it may be renewed, once only and exclusively for such time as is needed to acquire a vocational qualification recognised by a Member State in accordance with its national legislation or administrative practice, provided the holder still meets the conditions laid down in Articles 6 and 10.~~

~~*Article 15*~~

~~**Residence permit issued to volunteers**~~

~~A residence permit issued to volunteers shall be issued for a period of no more than one year. In exceptional cases, if the duration of the relevant programme is longer than one year, the duration of the validity of the residence permit may correspond to the period concerned.~~

⇩ new

➲ Council

*Article 18*

**Grounds for ➲ refusal ⊂ ➲ […] ⊂** [193]

1. Member States shall ➲ refuse ⊂ ➲ […] ⊂ an application in the following cases[194]:

(a) where the general conditions laid down in Article 6 ➲ , 6a or ⊂ ➲ […] ⊂ the relevant specific conditions laid down in Articles 7, ➲ […] ⊂ 10 to ➲ 14 or ⊂ 16 are not met;[195]

(b) where the documents presented have been fraudulently acquired, falsified or tampered with;

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193 **IT, ES**: scrutiny reservation. **SE**: linguistic reservation. Several delegations requested the addition of new grounds in this article:
- **DE, NL, AT** requested that "*willingness of the applicant to return*" be included as new grounds. **CION** did not support the inclusion of this new ground for refusal.
- **DE** suggested a new optional ground for refusal similar to the one in Article 19(1a)(d) of this proposal, in case that there are reasonable doubts from the beginning that the applicant would be able to complete his or her studies.
- **IT** also proposed the inclusion of the following new point: *"(f) if elements appear that are deemed to be justified and well-grounded, and also if clear evidence of incoherence and circumvention of specific immigration rules also emerges"*.

194 **EE** stated that Member States should have more flexibility and should not be obliged to issue a permit, even when all the conditions are met.

195 **EL** wanted to add here the new suggested Article 5a dealing with volumes of admission, since **EL** would like volumes of admission to be a reason for refusal of an application submitted under the terms of this proposal. Therefore, the proposed point (a) would be as follows: " *Where the general conditions laid down in Article **5a**, 6 or the relevant specific conditions laid down in Article 7, 10 to 14 or 16 are not met.*". Due to this addition, **EL** suggested that paragraph 3 of this article should be deleted. **AT** said that Article 9 should be included due to the need for a hosting agreement.

(c) where the host entity ➲ or agent ⊂ ➲ […] ⊂ was established ➲ or is operating for the main ⊂ ➲ […] ⊂ purpose of facilitating entry;[196]

(d) ➲ where it is evident from the circumstances[197] that the third-country national intends to reside or carry out an activity for purposes other than those for which he/she applies to be admitted; ⊂ ➲ […] ⊂

➲ […] ⊂

2. Member States may ➲ refuse ⊂ ➲ […] ⊂ an application ➲ in the following cases: ⊂ [198]

➲ (a) where the host entity or agent appears to have deliberately eliminated the positions it is trying to fill through the new application within the 12 months immediately preceding the date of the application;[199]

(b) where the host entity or agent has been sanctioned in conformity with national law for undeclared work and/or illegal employment or does not meet the legal obligations regarding social security and/or taxation set out in national law.[200]

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196 **DE**: scrutiny reservation on this point. **RO** suggested to merge points (b) and (c).

197 **FR** considered this as unclear and suggested to use the wording of Directive 2009/52: "*When there is a reasonable cause to […]*". **DE** suggested the following changes, stating as well that they could also accept **FR**'s suggestion:
*"where there are reasonable doubts that the third-country national intends mainly to reside or carry out activities for the purposes for which he/she applies to be admitted;"*. **CZ, EE** shared the same misgivings as **FR, DE**. **CION** stated a reservation on this wording.

198 **ES**: scrutiny reservation on the whole paragraph 2.

199 **ES** expressed a reservation on this point. **ES** is concerned about the relation between specific groups of this proposal and the notion of "worker". **ES** is of the opinion that this proposal should not determine the conditions of entry and residence of workers.

200 **PL** criticised that there is no information in this article about whether the host entity covers the host family. In addition, **PL** said that this provision should be mandatory. **CZ** supported the inclusion of this provision by **PRES**. **SE** supported the fact that this provision had been made optional, even though **SE** still saw problems with its implementation.

(c) where the business of the host entity or agent is being or has been wound up under national insolvency laws or, where relevant, if no economic activity is taking place or the host entity does not have adequate financial resources to grant satisfying conditions of stay or residence to the third-country national;

(d) where a member of the host family or the agent has been sanctioned in conformity with national law for breach of the conditions and/or objectives of au-pair placements;[201]

(e) where the terms of employment according to applicable laws, collective agreements or practices in the Member State where the host entity or agent is established are not met. [202]

201 **PL, SE** had doubts about how this point could be applied.

202 **ES** expressed a reservation on this point. **ES** is concerned about the relation between specific groups of this proposal and the notion of "worker". **ES** is of the opinion that this proposal should not determine the conditions of entry and residence of workers. **SE** welcomed the inclusion of this point.

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| ↓ 2004/114/EC (adapted) |
| ⇨ new |
| ➲ Council |

*Article ~~16~~ 19*

**⇨ Grounds for ⇦ ~~W~~withdrawal ~~or non-renewal~~ ➲ or non-renewal ➲ ~~of residence permits~~ ⇨ of an authorisation ⇦** [203]

1. Member States ~~may~~ ⇨ shall ⇦ withdraw ~~or refuse to renew~~ ➲ or refuse to renew ➲ ~~a residence permit issued on the basis of this Directive when it has been fraudulently acquired or wherever it appears that the holder did not meet or no longer meets the conditions for entry and residence laid down in Article 6 and in whichever of Articles 7 to 11 applies to the relevant category.~~ ⇨ an authorisation in the following cases : ⇦ [204]

[203] **PL, FR, IT, SE, DE**: scrutiny reservation. **AT** stated that a reference to volumes of admission is lacking in this article.

[204] **NL, HU, AT** were against taking out the deleted part in this paragraph, and therefore they would like to have it back.

⇩ new
➲ Council

(a) ➲ where the holder no longer meets the general conditions laid down in Article 6, except for Article 6(1)(d), 6a or the relevant specific conditions laid down in Articles 7, 10 to 14 or 16 were not met or are no longer met; ➲[205]

➲ (b) ➲ where authorisations ➲ […] ➲ ➲ or ➲ documents presented have been fraudulently acquired, falsified or tampered with;

➲ […] ➲➲ (c) ➲ where the third-country national is residing ➲ or carrying out an activity[206] ➲ for purposes other than those for which he/she was authorised to reside;

➲ […] ➲➲ (d) ➲ where the host entity ➲ or agent ➲ was established ➲ or is operating ➲ for the ➲ main ➲ ➲ […] ➲ purpose of facilitating entry;

(d) ➲ […] ➲

(e) ➲ […] ➲

(f) ➲ […] ➲

[205] **AT** said that Article 9 should be included due to the need for a hosting agreement. AT also requested to include the "threat to public security".

[206] **CION** questioned what the added-value of the addition of this wording is.

➲ 1a. Member States may withdraw or refuse to renew an authorisation in the following cases:

(a) if the host entity or agent has been sanctioned in conformity with national law for undeclared work and/or illegal employment or does not meet the legal obligations regarding social security and/or taxation set out in national law;

(b) where the business of the host entity or agent is being or has been wound up under national insolvency laws or, where relevant, if no economic activity is taking place or the host entity does not have adequate financial resources to grant satisfying conditions of stay or residence to the third-country national ;

(c) where a member of the host family or the agent has been sanctioned in conformity with national law for breach of the conditions and/or objectives of au-pair placements;[207]

(d) for students, where the time limits imposed on access to economic activities under Article 23 are not respected or if the respective student does not make acceptable progress[208] in the relevant studies in accordance with national legislation or administrative practice;[209]

(e) where the terms of employment according to applicable laws, collective agreements or practices in the Member State where the host entity or agent is established are not met. ➲[210]

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207 **DE**: scrutiny reservation.

208 **CZ** had problems with the wording "acceptable progress".

209 **DE, BG**: scrutiny reservation.

210 **PL** requested clarification on which cases this provision can be applied. **NL** gave some examples as where this provision could be applied: it could be applied to trainees if the paid is not in accordance with labour rules or to au-pairs who have to work more than 20 hours per week or to students that work more than the maximum hours allowed per week. **AT** supported **NL** in its explanations.

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| ↓ 2004/114/EC<br>⇨ new<br>➲ Council |

➲ 2. In case of withdrawal, when assessing the progress[211] in the relevant studies, as referred to in paragraph 1a(d), a Member State shall take into account the opinion[212] of the host entity. ➲

➲ […] ➲ ➲ 3. ➲ Member States may withdraw ~~or refuse to renew~~ ➲ or refuse to renew ➲ ~~a residence permit~~ ⇨ an authorisation ⇦ for reasons of public policy, public security or public health.[213]

211 According to **CION** the wording "assessing the progress" is too vague. **PL** requested that the "*lack of progress*" be also considered as a ground for non-renewal.

212 **AT, SE, SI, PT, IT** wondered how this paragraph was going to work in practice. Introducing the obligation for the competent national authorities to request the opinion of the host entity in each case would mean an unnecessary administrative burden and could produce significant delays. It should be deleted or, alternatively, converted in a "*may*" clause. **EL** was against the use of the word "opinion" and against deleting "educational establishment". **DE** agreed with the text suggested by **PRES**. **CION** pointed out that it does not need to be a "formal" opinion from universities. The idea is to give some elements to determine whether there has been acceptable progress.

213 **CZ** stated that it would like to make a modification to this paragraph as follows: "[…] *possible threat to public policy, public security or public health*".

↓ 2005/71/EC

~~Article 10~~

~~Withdrawal or non renewal of the residence permit~~

~~1. Member States may withdraw or refuse to renew a residence permit issued on the basis of this Directive when it has been fraudulently acquired or wherever it appears that the holder did not meet or no longer meets the conditions for entry and residence provided by Articles 6 and 7 or is residing for purposes other that that for which he was authorised to reside.~~

~~2. Member States may withdraw or refuse to renew a residence permit on grounds of public policy, public security or public health.~~

⇩ new
➲ Council

*Article 20*

**Grounds for non-renewal of an authorisation**

➲ […] ➲

🡻 2005/71/EC (adapted)

## CHAPTER V

## ~~RESEARCHERS'~~ RIGHTS

*Article ~~12~~ 21*

**Equal treatment**[214]

214 **DE, RO, AT, BG, FR, CZ, BE, HU, IT, FI, SI, PT, MT, EL, SK, PL**: scrutiny reservation. **ES**: reservation. **CZ** argued against the inclusion in this proposal of equal treatment rights in social security for non-economically active groups since, due to the lack of economic activity, they do not contribute to the national social security systems. **AT** stated that full equal treatment seems to be exaggerated in view of the temporary nature of the activities. **CION** answered that the rights stemming from this article are relatively limited and therefore they would not affect significantly the social security systems of the Member States. **BG** stated that even if it has a positive stance towards this proposal as a whole, it does not agree in particular with this provision on equal treatment.

⇩ new

➲ Council

➲ 1. Unremunerated and remunerated trainees, school pupils, volunteers and au-pairs, when they are in an employment relationship with an employer established in the Member State concerned or are allowed to work by virtue of the national law of the Member State concerned, and students shall enjoy equal treatment as provided for by Directive 2011/98/EU. ➲[215]

[215] **DE, FI, AT, FR, SI, SK, PL, IT**: scrutiny reservation. **ES** presented a reservation on the drafting of this paragraph since it considers that it deals with employment relationships. **DE, FI, AT, ES, IT** requested this paragraph to be brought in line with the Single Permit Directive. **SK** pointed out that this article refers to "equal treatment" while recital 36 refers to "fair treatment". **CION** stated that this proposal is different from the proposals on seasonal workers and intra-corporate transferees and that therefore it cannot simply be copied here from the Single Permit Directive as has been done with the other two proposals. **CION** deemed that this proposal is more complex due to the different categories included and that therefore here it is needed a different wording than the one in the Single Permit Directive. **CZ** stated that it does not agree with the extensive approach to equal treatment on social security. This equal treatment should only be for researchers.

➲ […] ⊂➲ 2. ⊂ By way of derogation from Article 12(2)(b) of Directive 2011/98/EU, ➲ […] ⊂ researchers shall be entitled to ➲ full[216] ⊂ equal treatment with nationals of the host Member State as regards ➲ provisions in national law regarding the ⊂ branches of social security, ➲ […] ⊂ defined in ➲ Article 3 of ⊂ Regulation ➲ (EC) ⊂ No 883/2004 ➲ […] ⊂. ➲ In the event of mobility between Member States Council Regulation (EC) No 1231/2010 shall apply accordingly. ⊂ [217]

[216] **CY, AT** were of the opinion that the reference to "full" should be deleted. **AT** stated that researchers being entitled to "full equal treatment with nationals of the host Member State" means that family benefits are implicitly included. **AT** is against the inclusion of family benefits in this provision. **FI** showed doubts and requested clarification about the implications of the word "full" as regards equal treatment.

[217] **AT, DE, IT, FI, ES**: scrutiny reservation. **DE, AT, HU, FI, PL** found the relationship of this paragraph with the Single Permit Directive unclear. **BG** stated that the procedure applicable to researchers should be similar to that provided for in the Blue Card Directive. **AT, EL** stated that researchers can be covered by a bilateral agreement on social security. They requested that a mention to such social security bilateral agreements be inserted here. **IT, MT, LV, AT, DE, EL, LT** were against the inclusion of family benefits in this provision on equal treatment. **DE** pointed out that equal treatment, including family benefits, applies to researchers residing in the territory over 6 months, according to the Single Permit Directive, but not for residence under 6 months. **IT** also mentioned the problem of the social security payments for researcher's family. **EL, HU** agreed with the changes to this provision. **HU** also pointed out that Regulation 1231/2010 should be "EU", instead of "EC". **CION** wanted to precise that it created in its proposal an exception from the Single Permit Directive, but only to the extent to keep the same level of rights for researchers as it is currently stipulated in the Researchers Directive in force.

➲ […] ➲➲ 3. ➲ School pupils, volunteers, ➲ remunerated or ➲ unremunerated trainees and au-pairs, irrespective of whether they are allowed to work in accordance with Union or national law, shall be entitled to equal treatment in relation to access to goods and services and the supply of goods and services made available to the public, except procedures for obtaining housing ➲ , study and vocational training grants and loans or services provided by public employment services, ➲ as provided for by national law. [218]

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🡻 2005/71/EC (adapted)

*Article ~~11~~ 22*

**Teaching ⌦ by researchers ⌫**

~~1.~~ Researchers admitted under this Directive may teach in accordance with national legislation.~~2.~~ Member States may set a maximum number of hours or of days for the activity of teaching.

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[218] **DE, AT, CZ**: scrutiny reservation. **ES**: reservation since the wording of the paragraph is confusing. **CION** also had a reservation on the additions that have been made to the exceptions at the end of the paragraph. **NL, AT** proposed the deletion of this paragraph since it is going too far. **SI** introduced scrutiny reservation on "access to goods and services and the supply of goods and services made available to the public" and asked for clarification of the term "available to the public". **SI** also entered a linguistic reservation to this whole paragraph. **DE, EL** suggested the exclusion of study and vocational training grants from the scope of this paragraph. **LV** also proposed the exclusion of employment services. Furthermore, **BE** proposed the exclusion of disability benefits. **FR** requested clarification on the distinction between housing and student accommodation, since **FR** is of the opinion that accommodation should be permitted for students.

🡻 2004/114/EC (adapted)
⇨ new
➲ Council

~~CHAPTER IV~~

~~TREATMENT OF THE THIRD-COUNTRY NATIONALS CONCERNED~~

*Article ~~17~~ 23*

**Economic activities by students**[219]

1. Outside their study time and subject to the rules and conditions applicable to the relevant activity in the host Member State, students shall be entitled to be employed and may be entitled to exercise self-employed economic activity[220]. The situation of the labour market in the host Member State may be taken into account.[221]

2. Where necessary, Member States shall grant students and/or employers prior authorisation in accordance with national legislation.

219 **AT, FR, CZ, SK, EL**: scrutiny reservation. **DE, SE, LU, FI**: support this provision. **PL** criticised that in this article is still not clear whether the right to access to employment is available to researchers and students that are using the right to mobility, and the same applies to their families.

220 **CY** requested clarification concerning the wording "students […] may be entitled to exercise self-employed economic activity". **CY** asked whether this means that students will be able to work, additionally to the 15 hours weekly, in any self-employment activity without the prior permit of the migration authorities?

221 **EL** considered that the Member States should check the situation of the national labour market, as a mandatory clause, having the right no to, as an optional derogation.

~~2~~3. Each Member State shall determine the maximum number of hours per week or days or months per year allowed for such an activity, which shall not be less than ~~10~~ ⇨ ➲ […] ➲ [15] ➲ ⇦[222] hours per week, or the equivalent in days or months per year.

~~3. Access to economic activities for the first year of residence may be restricted by the host Member State.~~[223]

4. Member States may require students to report, in advance or otherwise, to an authority designated by the Member State concerned, that they are engaging in an economic activity. Their employers may also be subject to a reporting obligation ➲ […] ➲ .

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222 **ES**: reservation. **CZ, SK, DE** supported **PRES** change to 15 hours. **NL, RO** preferred 10 hours as it is the case in the current Directive. This is a minimum so Member States still enjoy a degree of flexibility. **AT, EL, MT** supported **NL**, preferring a figure of 10 hours. **AT** is also against the deletion of the old paragraph 3. **EL** pointed out that as an alternative to a minimum figure, it would agree with a general provision dealing with the right of the Member States to decide the exact figure. **IT** prefers a maximum limit rather than a minimum limit as it is the case now. **ES** introduced a scrutiny reservation, but received well the idea of the reduction to 15 hours. **FR** finds it more relevant to reason in terms of a working hours ceiling per year, instead of referring to a minimum threshold. In **FR**, a student is not allowed to work more than the equivalent of 60% of a full-time job, that is to say 964 hours per year. **FR** thinks that this system gives more flexibility. **SE** agreed with **FR** that flexibility is needed. In **SE**, students can work without any limitation, therefore **SE** would prefer not to put any limit at all. **CION** insisted in maintaining the minimum of 20 hours per week, and stressed the fact that it can also be calculated in days and months per year.

223 **AT** is against the deletion of this paragraph. **LU**: scrutiny reservation.

⇩ new

➲ Council

*Article 24*

**➲ Extension of the right of residence for the purposes of ➲ job-searching and entrepreneurship for researchers and students[224]**

[224] **BE, FR, IT, SI, DE, LU, ES, EL, CZ**: scrutiny reservation. **ES**: linguistic reservation on the concept of launching a business. **EL** Parliament's views are against this provision being mandatory. **EL** expressed strong concerns regarding the right of third-country nationals to have an automatic right to seek job or set up a business. **EL** was of the opinion that Member States should have the right to decide whether they will grant that right of extra residence period for that purpose while taking into account the situation in the national labour market. In this spirit, **EL** opposed to the proposed distinction between "job seeking" and "access to the labour market". **FR** would like this article to be applicable also to other categories, not just students and researchers. It would present something along these lines in writing. **FI, PL, EE, PT, SE, NL**: support.
Some delegations put forward their wishes to insert additional conditions:
- **SK**: for the setting up of a business, students/researchers should apply before their studies/research are finished in order to avoid to be a burden for the social security of the Member State.
- **PL, SI**: there should be a express reference to "*sufficient means of subsistence*".

➲ 1. ⊂ After ➲ a ⊂ finalisation[225] of research or studies[226] in the Member State, ➲ followed by a positive evaluation[227] of the host entity in case of researchers and by the evidence of having obtained a higher education qualification in case of students ⊂ third-country nationals shall ➲ […] ⊂ ➲ have the right to apply ⊂ to stay on the territory of the Member State for a period of ➲ at least [6] [228]⊂ ➲ […] ⊂ months in order to look for work or set up a business, if the conditions laid down in ➲ Article 6(1) ⊂ points (a) and (c) to (f) ➲ […] ⊂ are still fulfilled. In a period of more than 3 and less than 6 months, third-country nationals may be requested to provide evidence that they continue to seek employment or are in the process of setting up a business. After a period of 6 months, third-country nationals may additionally be requested to provide evidence that they have a genuine chance of being engaged or of launching a business.[229]

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225 **SE** was of the opinion that the notion "*completing*" might be a better wording than "finalisation" since it suggests that the student or researcher has achieved the intended results.

226 **FR** preferred to make reference to "*holder of a qualification*" or "*holder of a diploma*".

227 **ES, HU, AT, DE, SE, EL**: scrutiny reservation. They requested clarification on what "positive evaluation" means. They were worried on the possibility of administrative burden that it may entail, specially for universities. **CION** agreed with the concerns of these delegations. **SE** suggested the following modification to the beginning of this paragraph: "*After having completed the research activity or studies in the Member State, third-country nationals shall be entitled to […]*"
**HU**, supported by **CZ**, stated that concerning job-seeking and entrepreneurship, it would be appropriate to refer to the skills that have been acquired, or the level of knowledge that have been acquired. **ES, DE** requested that a mention concerning "*public order*" should be included in this paragraph. **PRES** stated that Article 6 already deals with the notion of "public order".

228 **AT, HU, FR, LV, BE, SI**: supported the reduction to 6 months. **DE, CZ**: scrutiny reservation. **DE** stated that it could support a period of 18 months since this is the case already in its legislation. **CZ** did not agree with 6 months, it preferred 3 months and that this provision should be optional and not mandatory. **CY** could accept 12 months for researchers, but not for students, au-pairs and the other categories. Alternatively, it should be left to the Member States to decide. **CION** continued to support its original proposal of 12 months.

229 Several delegations requested clarification:
- on the concept of setting up a business (**FI, IT**).
- on access to benefits (**FI**). **MT** stated that such access should be excluded. **CION** stated that the need for "sufficient resources" under Article 6 of this proposal *de facto* excludes any access to social assistance.

- on what "genuine chance of being engaged" means (**IT**). **CION** explained that the student/researcher would have to provide evidence such as a job offer.
- on whether this article would be applicable in cases where Member States apply a zero quota (**DE**). **CION** answered that a communication from the Member State that the quota is zero should be enough.

➲ Member States may require that the work the third-country national is seeking or the business he/she is in the process of setting up corresponds to the area of research or field of studies finalised or skills gained by the third-country national. ➲

➲ 2. For the purpose of stay referred to in paragraph 1, provided that conditions laid down in Article 6(1) points (a) and (c) to (f) are fulfilled, Member States shall issue or renew an authorisation other than foreseen in Article 15[230] to the third-country national and, where relevant, to his family members according to their national law. ➲[231]

230 **PL** was of the opinion that the wording "an authorisation other than foreseen in Article 15" should be redrafted, since it can suggest that researchers and students, who are allowed to stay on the territory of Member States in order to look for a job or set up a business, shall be granted documents other than visa and residence permit. **PL** also pointed out that the provisions concerning granting the authorisations to the family members should be included in Art. 25 of the proposal. Placing these provisions in art. 24 suggests that the directive not only grants the right to stay to the family members of researchers but also to the family members of students.

231 **AT** agreed with the inclusion of this paragraph but thinks that it should be optional whether the Member State grants a residence permit or a visa in such cases. **AT** further stated that detailed provisions on the procedure are lacking, for example that the third-country national must lodge his application before the expiry of the valid residence permit as a student or a researcher, or even the necessary submission of an applications itself. **FR** pointed out the issue that once a student or researcher obtains a job, they change their legal status to employee. **BE** was of the opinion that this paragraph clarified the question of change of status and pointed out that the residence permit should not be renewed. **LV, DE, SI, SE** supported this new paragraph. **EL** pointed out that it may be needed the establishment of a minimum period for residence.

➲ 3. If the conditions provided for in paragraph 1 are no longer fulfilled, Member States shall withdraw the authorisation of the third country national and his/her family members according to their national law. Member States may[232] also withdraw the authorisation if the third-country national is seeking employment or is in the process of setting up a business which does not correspond to the area of research or field of studies finalised or skills gained by the third-country national. ➲

*Article 25*

**Researchers' family members[233]**

1. By way of derogation from Article 3(1) and Article 8 of Directive 2003/86/EC, family reunification shall not be made dependent on the holder of the authorisation to stay for the purposes of research having reasonable prospects of obtaining the right of permanent residence and having a minimum period of residence.

2. By way of derogation from the last subparagraph of Article 4(1) and Article 7(2) of Directive 2003/86/EC, the integration conditions and measures referred to in those provisions may only be applied after the persons concerned have been granted family reunification.

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232 **PL** stated that the optional ground for the withdrawal of the authorisation suggests that researchers and students are not allowed to seek employment or be in the process of setting a business, which does not correspond to the level of research or studies finalised by the third-country national. **PL** also pointed out that such requirement is not provided in the 1st paragraph of this article, which determines the prerequisites to grant the third-country nationals the authorisation for the purposes of job-searching or setting up the business. **ES** stated a reservation on the use of "may". **SE** preferred this to remain an optional provision.

233 **DE, CZ, FR**: scrutiny reservation. **NL, SE**: support.

3. ➲ Without prejudice to Article 24(2) and ➲ by way of derogation from the first subparagraph of Article 5(4) of Directive 2003/86/EC, authorisations for family members shall be granted, where the conditions for family reunification are fulfilled, within 90 days from the date on which the application was lodged ➲ […] ➲ .[234]

4. By way of derogation from Article 13(2) ➲ […] ➲ of Directive 2003/86/EC, the duration of validity of the authorisation of family members shall ➲ […] ➲ ➲ , as a general rule, end on the date of expiry of the ➲ authorisation ➲ […] ➲ ➲ issued ➲ to the researcher ➲ […] ➲.

5. By way of derogation from the second sentence of Article 14(2) of Directive 2003/86/EC, Member States shall not apply any time limit in respect of access to the labour market.[235]

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234 **AT, EL, LU, BE**: scrutiny reservation. **IT, AT, EL, LU, SE** were of the opinion that the set of time-limits 90/60 days were too short. In particular, **IT** suggested a time-limit set of 180/90 days and **SE** said that it would be preferable not to have time-limits in the proposal since it gives Member States less flexibility. **HU** preferred to keep the reference to the 60-day time limit applicable in the case of Union programmes including mobility measures which has been deleted in the current version of the text.

235 **EL, LU, AT**: scrutiny reservation. **CY** preferred a "*may*" clause as regards the free access to the labour market for researcher's family members. **SK** preferred that the access to the labour market of family members should be dealt with by Member States at national level. **EL** supported **SK** on this. **EL** pointed out that it is of the opinion that this provision should be either optional for Member States or should be in line with Article 14(2) of Directive 2003/86/EC on the right to family reunification. **DE** asked whether a labour market test, which is allowed under the Family Reunification Directive, would be prohibited here. **CION** answered that there should be no labour market test since the lack of it is what increases attractiveness of the proposal.

# CHAPTER VI

# MOBILITY BETWEEN MEMBER STATES[236]

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| ↓ 2005/71/EC |
| ➲ Council |

*Article ~~13~~ 26 ➲ A ➲*

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236 **LV, AT, ES, PT, SK, DE**: scrutiny reservation on the whole Chapter VI. **AT** had a general reservation since the these mobility provisions, strongly based on equivalent ICT provisions, are very complicated and apply to very large (researchers and students) and different groups of third-country nationals than the ICT provisions. **ES** expressed a reservation on this mobility scheme, specifically on the regulation of researchers' mobility. **ES** considered the new scheme too rigid and difficult to understand. In particular for researchers, **ES** would like to have mobility arrangements more flexible than the one suggested since the goal of this proposal is to attract "international talent". **FR** pointed out that the new mobility provisions suggested by **PRES** mirroring ICT provisions could have the unwanted effect, due to its rigidity and cumbersomeness, to hinder mobility rather than foster it. **FR** is also against a system that is too rigid. **PL** stated that it is important to clarify in the text of the proposal the mutual relation between its mobility scheme and Article 21 of the Convention implementing the Schengen Agreement. **PL** showed concerns that the mobility scheme might create different time frames comparing to the period specified in Article 21 of the Convention and also wondered how this mobility scheme could work in cases of Member States not applying yet the Schengen *acquis*. As a general remark, **CY** pointed out that the terms short and long-term mobility of researchers should be determined regarding the time period each term covers. Additionally, according to **CY**, it should be clarified whether the process followed for short-term mobility will be valid also for long-term mobility, and whether the 2nd Member State will be informed in advance about the intended transfer.

➲ […] ➲ ➲ **Short-term mobility of researchers** ➲[237]

1. A third-country national who has been admitted as a researcher under this Directive shall be allowed to carry out part of his/her research in another Member State under the conditions as set out in this Article.

[237] **IT, AT**: scrutiny reservation on the whole article. **AT** pointed out that the proposed notification procedure takes place only between the 1st and 2nd Member State. Not even the researcher can be sure whether he/she meets the conditions for the exercise of mobility. **AT** suggested, for the sake of legal certainty, that the researcher should receive a document form the 2nd Member State which would provide some kind of "assurance" that he/she is entitled to stay and which would allow him/her to provide evidence of legal residence in the 2nd Member State. **AT** also suggested to insert in this article specific procedural requirements to deal with cases where the residence title issued by the 1st Member State expires while the researcher is staying in the 2nd Member State.

~~2.~~ ➲ 2. ➲ If the researcher stays[238] in another Member State for a period of up to ➲ […] ➲ ➲ 90 days in any 180-day period ➲ , the research ➲ activity ➲ may be carried out on the basis of the hosting agreement[239] concluded in the first Member State, provided that he has sufficient resources in the other Member State and is not considered as a threat to public policy, public security or public health in the second Member State.[240]

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238 **AT** suggested that the wording "if the researcher stays" has to be replaced by "*if the researcher intends to stay*", otherwise the provisions would only apply when the researcher is already staying in the 2nd Member State. **AT** pointed out that this applies equally to Article 26B(1).

239 **ES** wanted more flexibility on the regulation of researchers' mobility. Therefore, **ES** was of the opinion that it has to be allowed other ways, besides the hosting agreement, to allow mobility, for example on the basis of a *labour contract*. **PL, AT** pointed out that the hosting agreement is not the document that granted the right to stay to the third-country national, and therefore it would be necessary for the researchers to provide a document from the 1st Member State showing they have an authorisation to stay. Authorities in the 2nd Member State need to be informed about the researchers from the 1st Member State staying in its territory. **AT, RO** pointed out the need of including a provision in this paragraph dealing with the cases in which the authorisation has expired during the stay period. **PRES** replied that Article 26C(f) already deals with this. **CION** advocated that its original proposal reflected better the specific needs of the researchers.

240 **HU, FI, SK, SE**: scrutiny reservation. **HU** is in favour of a consistent approach with ICT provisions but also would like to insert some flexibility in this proposal. **FI** preferred 6 months as it is the case in **FI**, instead of the 3 months suggested by **PRES**. **SK** pointed out that the method of cooperation between the 1st and 2nd Member States is not dealt with in this paragraph, to which **PRES** answered that a system of contact points could be used as in the long-term residents Directive. **SE** pointed out that it is unclear how it is calculated the number of days that a third-country national would be able to exercise the right of mobility. **CZ** supported the wording of this paragraph and suggested adding to the obligations of the researcher to have comprehensive sickness insurance for the duration of his stay in another Member State, to the extent that is set for nationals/system of public health insurance, including repatriation for medical reasons and repatriation of remains. **PL** suggested the following redrafting of this paragraph in order to ensure coherence with Article 21 of the Convention implementing the Schengen Agreement:
"*The researcher may carry out the research activity on the basis of the hosting agreement concluded in the first Member State for a period of up to 90 days in any 180 -day period within the territory of other Member States, provided that he/she has valid authorisation issued by the first Member State, valid travel document, sufficient resources in the other Member State and is not considered as a threat to public policy, public security or public health in the second Member State.*"

➲ 3. The second Member State may require [the host entity] in the first Member State to notify the first Member State and the second Member State of the intention of the researcher to carry out the research activity in [the research organization] established in the second Member State:[241]

(a) either at the time of the application in the first Member State, where the mobility to the second Member State is already foreseen at that stage;

(b) or after the researcher has started research activity in the first Member State, as soon as the intended mobility to the second Member State is known.[242]

4. The notification shall include the transmission to the second Member State of the documents transferred[243] to the first Member State in the context of Article 6 (1) (a), (c) and (f) and the planned duration and dates of the mobility.[244]

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241 **AT** pointed out that in case of refusal of mobility by the second Member State, it is obliged to inform the competent authorities of the 1st Member State, the researcher and the host entity without delay, even though the authorities of the 2nd Member State were never in contact with the researcher in the previous procedure. According to **AT** this, in practice, would be very difficult for the competent authorities of the 2nd Member State to determine the address of the researcher within a short time. Such a procedure would take a long time. This applies equally to the relevant provisions of Article 26D. **CY** requested clarification on the practical implementation of the notification process of each of the two alternatives (points (a) and (b)).

242 **EL** suggested to introduce an *ex-ante* check, to establish a time-limit to receive the information *before* the entry of the researcher into the territory of the 2nd Member State.

243 **PT** wondered whether instead of "transferred" it should not say "*presented*".

244 **NL** was of the opinion that the hosting agreement signed by the university in the 1st Member State should also be added to the list of documents to be transmitted to the 2nd Member State. **DE** requested to also include in this paragraph documents that the 2nd Member State can check that the third-country national does not represent a threat of public security and public order. **SE** asked about how the system of document transmission would work. **PRES** answered that the documents should be submitted by the applicant or the host entity. These would be the same documents that had been submitted to the 1st Member State.

5. Where the notification has taken place in accordance with paragraph 3 (a), and where the second Member State has not raised any objection with the first Member State in accordance with paragraph 7, the mobility of the researcher to the second Member State may take place at any moment within the validity of the authorisation.245

6. Where the notification has taken place in accordance with paragraph 3 (b), the mobility may be initiated after the notification to the second Member State immediately or at any moment thereafter within the validity of the authorisation.246

7. Following the notification referred to in paragraph 3, the second Member State may object to the mobility of the researcher to its territory within 20247 days from having received the notification, where:248

(a) the criteria set out in Article 6(1), points (a), (c) and (f), are not met;

(b) the researcher is considered to pose a threat to public policy, public security or public health;

(c) the documents presented have been fraudulently acquired, falsified or tampered with;

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245 **ES**: scrutiny reservation. **PL** pointed out that paragraphs 5 and 6 refer to the notification procedure and wondered what happens when the Member State decides not to apply such notification procedure.

246 **ES**: scrutiny reservation.

247 **EE, CZ, AT, FI, IT, SK** were of the opinion that 20 days is too short. They proposed to use a 30-days period instead. **EE** also wondered whether a procedure allowing the 2nd Member State to revoke the authorisation given by the 1st Member State should not be included in this proposal. **PRES** answered that the 2nd Member State cannot do anything about the authorisation given by the 1st Member State, but the 2nd Member State can object to the entry of the researcher in its territory. **SE** asked how this would work if the 2nd Member State objects. **PRES** answered that this procedural issues is left to the discretion of the Member States.

248 **NL** proposed the introduction of a new point (e): "*if labour conditions are not in line with the requirements of the national labour law.*"

(d) the maximum duration of stay as defined in paragraph (2) has been reached.

The competent authorities of the second Member State shall inform[249] without delay the competent authorities of the first Member State, the researcher and [the host entity] about their objection to the mobility.

8. Where the second Member State objects to the mobility in accordance with paragraph 7 and the mobility has not yet taken place, the researcher shall not be allowed to carry out research activity in the second Member State on the basis of the hosting agreement.

9. In case the authorisation is renewed by the first Member State, the renewed authorisation continues to authorise its holder to carry out the research activity in the second Member State notified, subject to the maximum duration stated in paragraph 2.

[249] **PL** pointed out that it might be difficult to put in practice this obligation since the authorities of the 2nd Member State might not know the address of the researcher. According to **PL**, an option could be that the host entity in the 2nd Member State informs the researcher that the mobility has been denied. **PT** supported **PL** on its doubts. **PT** suggested the following addition: *"[…] the researcher and / or the host entity […]"*.

➲ *Article 26B* ➲

**➲ Long-term mobility of researchers ➲**[250]

~~3.~~ ➲ 1. ➲ If the researcher ➲ who has a valid authorisation issued by the first Member State ➲ stays in another Member State for more than ➲ […] ➲ ➲ 90 days within any 180-day period, the second Member State ➲ may ➲ decide to: ➲ ➲ […] ➲[251]

➲ (a) apply the provisions referred to in Article 26A and allow the researcher to carry out the research activity on its territory based on and during the validity of the authorisation issued by the first Member State;

or

(b) apply the procedure provided for in this Article. ➲

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⇩ new
➲ Council

➲ […] ➲

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250 **CION** stated, since this system does not create a specific authorisation for long-term stays, that paragraphs 3 and 4 might not be needed at all. **CION** also suggested that Member States should be encouraged to have an accelerated procedure and pointed out that article 13(4) of the current Researchers Directive gives an example of such accelerated procedure.

251 **AT**: scrutiny reservation. **AT** wondered whether this paragraph should not include a maximum time limit otherwise it might seem that the researcher enjoys of an unlimited period. **AT** also expressed doubts about this paragraph not being clear enough about the documents that should be issued to the researcher in case of long-term mobility by the 2nd Member State. **FR** stated that the fact of having two procedures can create confusion and it would prefer this to be simplified. **LV** expressed its positive opinion about the **PRES** suggestion. **SE** expressed concerns about whether this system deviates from the Schengen *acquis*.

➲ 2. Where the researcher applies for long-term mobility:

(a) The second Member State may require [the host entity] or the researcher to transmit some or all of the documents referred to in Article 6 (1) (a), (c), (f), (2) and Article 7 (1), where these documents are required by the second Member State for an initial application;[252]

(b) The researcher shall not be required to leave the territories of the Member States in order to submit the application and shall not be subject to a visa requirement;[253]

(c) The researcher shall be allowed to carry out the research activity in the second Member State until a decision on the application for long-term mobility has been taken by the competent authorities, provided that the time period referred to in Article 26A (2) and the period of validity of the authorisation issued by the first Member State has not expired.[254]

3. Based on the documentation provided for in paragraph 2, Member States may reject an application for long-term mobility where:

(a) one of the grounds covered by Article 18 applies;

(b) the authorisation of the first Member State expired.

4. Where a Member State takes a decision on an application for long-term mobility, the provisions of Articles 29 and 31 shall apply. ➲

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252 **AT** stated that there should also be a reference to Article 6(1)(d) (threat to public order and safety) and Article 6(1)(e) (proof of payment of fees). This also applies to Article 26E(2)(a).

253 **DE** wondered about this point since it stipulates an obligation but in not very concrete terms. **AT** pointed out that this only applies as long as the permit of the 1st Member State is valid and this should be explicitly stated.

254 **AT** pointed out that there might be a need to add in this point the possibility of imposing penalties.

➲ *Article 26C* ➲

**➲ Safeguards in case of researchers mobility ➲**[255]

➲ 1. [The host entity] shall inform the competent authorities of the second Member State of any modification which affects the conditions on which basis the mobility was allowed to take place.

2. Where the second Member State:

(a) has not been notified in accordance with Article 26A (3) and (4) and requires such notification;

(b) has objected to the mobility in accordance with Article 26A (7);

(c) has found that the researcher continues the research activity in the second Member State although the conditions laid down in Article 26B (2) (c) are no longer complied with;

(d) has rejected an application for mobility in accordance with Article 26B (3);

(e) has found that the authorisation is used for purposes other than those for which it was issued;

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255 **AT**: scrutiny reservation. **NL, AT, DE** pointed out that while in the version discussed in the ICT proposal the equivalent article has sanctions, in this provision there are no sanctions included. They preferred sanctions be added in this article as in the relevant ICT article. **PL, AT** suggested the addition of a requirement for the researcher to leave the territory if there is no valid permit, something in the line of "*the researcher shall cease all activity and leave its territory*". **AT** also requested to include the possibility for the 2nd Member State to request proof and to be able to revoke the residence permit of the researcher. This also applies to Article 26F(2). **SK** pointed out that the researcher is normally with the family in the 2nd Member State and that leaving requires organisation and does not happen overnight, therefore **SK** suggested to introduce a time-limit for leaving. **CION** did not agree with the suggestion of including sanctions since the goal is to make the EU attractive to researchers and the inclusion of sanctions will not help the attainment of this goal.

(f) has found that the conditions on which the mobility was allowed to take place are no longer fulfilled,

it may request that:

i) the researcher shall cease all activity on its territory;

ii) the first Member State shall immediately allow re-entry of the researcher without formalities and, where applicable, his or her family members. This shall also apply if the authorisation issued by the first Member State has expired or has been withdrawn during the period of mobility within the second Member State.

3. In case the first Member State withdraws the authorisation it shall inform the authorities of the second Member State immediately. ⊂

➲ *Article 26D* ➲

**➲ Short-term mobility for students [and remunerated trainees[256]] ➲**[257]

256 **RO, AT** expressed a reservation against including remunerated trainees.

257 **HU, ES**: scrutiny reservation. **AT** was of the opinion, on the question on short-term mobility of students for the purposes of this proposal, that such mobility to a 2nd Member State should only be regulated in this proposal for periods between 3 and 6 months. According to **AT**, stays of up to 3 months are already regulated by the Schengen *acquis* and the provisions provided for short stays of students in the current draft seem to be much more difficult and complicated than the relevant provisions in the Schengen *acquis*. Therefore, the student would be treated less favourably according to the current draft and this cannot be the intention. Mobility for more than 6 months has to be rejected as well. In view of the overall permitted stay of students for a duration of one year, students who intend to stay for more than 6 months in a 2nd Member State would stay for more than the half of the whole duration of their stay in the 2nd Member State. According to **AT**, such a provision would be susceptible to abuse and circumvention. **AT** explained that according to the current draft, the student may apply for a residence permit in a Member State, where the admission seems to be very easy, and afterwards makes use of his mobility to stay nearly the whole duration of his overall permitted stay in the 2nd Member State. In order to avoid such cases of circumvention, it has to be ensured that the student must apply for a residence permit in the 2nd Member State, where he intends to spend most of his time. Thus, it would not be necessary to provide for mobility provisions for more than 6 months. **AT** also pointed out that as far as students are concerned they normally move for a whole semester and not just three months. **CION** agreed with **AT** that students usually move for a semester and not only three months, so it advocated to use provisions for students that cover a whole academic semester as it did in its original proposal. **PRES** asked delegations whether they preferred a 6-month period for students. **FR** supported what **AT** and **CION** had said about a semester vs 3 months. According to **FR** a semester would increase the attractiveness of the EU for third-country-national students. **FR** was of the opinion that students should also be able to work in the 2nd Member State where they are going to study. **NL** preferred a semester as the duration period for the short-term mobility. **SE** preferred to link short-term mobility to a period of 6 months, since the term "semester" can be interpreted differently in the Member States. According to **SE**, this period of 6 months would further facilitate intra-EU mobility, make the EU more attractive and be more efficient for the responsible authorities (since the Member States can allow such mobility without specific permits or control measures). **FI** also preferred the duration to be expressed in months, for example 6 months, and not in semesters. **FI** explained that in **FI** there may be several (even up to four) semesters within one year in some education establishments and the number of semesters may differ between different education establishments. **SK, PL, CZ, CY** supported a duration of 3 months. **HR** pointed out its flexible position as far as the debate on the duration is concerned.

➲ 1. A third-country national who has been admitted as a student [or remunerated trainee] under this Directive shall be allowed to carry out part of his/her studies [or traineeship] in the [host entity] established in another Member State for a period of up to 90 days in any 180-day period subject to the conditions set out in this Article.[258]

2. The second Member State may require [the host entity] in the first Member State to notify the first Member State and the second Member State of the intention of the student [or remunerated trainee] to carry out study [or traineeship] in [the host entity] established in the second Member State:

(a) either at the time of the application in the first Member State, where the mobility to the second Member State is already foreseen at that stage;

(b) or after the student [or remunerated trainee] has started studies [or traineeship] in the first Member State, as soon as the intended mobility to the second Member State is known.

3. The notification shall include the transmission to the second Member State of the documents transferred to the first Member State in the context of Article 6 (1) (a), (c), (f) and Article 10 (1) (a) [or Article 12 (1) (a)] and, where not specified in any of the preceding documents, the planned duration and dates of the mobility.

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258 **PL** suggested the following redrafting of this paragraph in order to ensure coherence with Article 21 of the Convention implementing the Schengen Agreement:
"*A third-country national who has been admitted as a student under this Directive shall be allowed to carry out part of his/her studies in other Member States for period of 90 days in any 180-day period, provided that he/she has valid authorisation issued by the first Member State, valid travel document, sufficient resources in the other Member State and is not considered as a threat to public policy, public security or public health in the second Member State*."

4. Where the notification has taken place in accordance with paragraph 2 (a), and where the second Member State has not raised any objection with the first Member State in accordance with paragraph 6, the mobility of the student [or remunerated trainee] to the second Member State may take place at any moment within the validity of the authorisation.

5. Where the notification has taken place in accordance with paragraph 2 (b), the mobility may be initiated after the notification to the second Member State immediately or at any moment thereafter within the validity of the authorisation.

6. Following the notification referred to in paragraph 2, the second Member State may object to the mobility of the student [or remunerated trainee] to its territory within 20 days from having received the notification, where:[259]

(a) the criteria set out in Article 6 (1) (a), (c), (f) and Article 10 (1) (a) [or Article 12 (1) (a)], are not met;

(b) the student [or remunerated trainee] is considered to pose a threat to public policy, public security or public health;

(c) the documents presented have been fraudulently acquired, falsified or tampered with;

(d) the maximum duration of stay as defined in paragraph 1 has been reached;

The competent authorities of the second Member State shall inform without delay the competent authorities of the first Member State, the student [or remunerated trainee] and [the host entity] about their objection to the mobility.

[259] **NL** proposed the introduction of a new point (e): "*if labour conditions are not in line with the requirements of the national labour law.*" **DE** supported the request from **NL** and also suggested to make reference to *collective agreements* in the line as it was discussed for ICT proposal.

7. Where the second Member State objects to the mobility in accordance with paragraph 6 and the mobility has not yet taken place, the student [or remunerated trainee] shall not be allowed to carry out studies [or traineeship] in the second Member State.

8. In case the authorisation is renewed by the first Member State, the renewed authorisation continues to authorise its holder to carry out studies [or traineeship] in the second Member State notified, subject to the maximum duration stated in paragraph 1.

9. Where the students intend to carry out economic activities in the second Member State, Article 23 shall apply. [260]

*Article 26E*

**Long-term mobility of students [and remunerated trainees]** [261]

1. If the student [or remunerated trainee] who has a valid authorisation issued by the first Member State stays[262] in another Member State for more than 90 days within any 180-day period, the second Member State may decide to:

(a) apply the provisions referred to in Article 26D and allow the student [or remunerated trainee] to stay and carry out studies [or traineeship] on its territory based on and during the validity of the authorisation issued by the first Member State;

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260 **AT** expressed a reservation on this paragraph since it thinks that this paragraph should be very clear about the fact that permanent work is not the main objective of the move to the 2nd Member State.

261 **AT**: scrutiny reservation.

262 **AT** suggested that the term "stays" has to be replaced by "*intends to stay*", otherwise the provisions would only apply when the third-country national is already staying in the 2nd Member State. **AT** also suggested to insert a limitation for the maximum duration of the stay of the third-country national.

or

(b) apply the procedure provided for in this Article.

2. Where an application for long-term mobility is made:

(a) The second Member State may require [the host entity] or the student [or remunerated trainee] to transmit some or all of the documents referred to in Article 6 (1) (a), (c), (f), (2) and Article 10 (1) [or Article 12 (1)] where these documents are required by the second Member State for an initial application;

(b) The student [or remunerated trainee] shall not be required to leave the territories of the Member States in order to submit the application and shall not be subject to a visa requirement;[263]

(c) The student [or remunerated trainee] shall be allowed to carry out studies [or traineeship] in the second Member State until a decision on the application for long-term mobility has been taken by the competent authorities, provided that the time period referred to in Article 26D (1) and the period of validity of the authorisation issued by the first Member State has not expired.[264]

3. Based on the documentation provided for in paragraph 2, Member States may reject an application for long-term mobility where:

(a) one of the grounds covered by Article 18 applies;

(b) the authorisation of the first Member State expired.

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263 **AT** pointed out that this only applies as long as the permit of the 1st Member State is valid and this should be explicitly stated.

264 **AT** expressed its concerns about this provision being susceptible to abuse and circumvention. According to **AT**, this provision would mean that students may exercise their right of mobility without ever meeting the conditions for mobility. Pending the decision of the competent authorities after all legal options available have been exhausted, the student may have completed the semester without ever having met the necessary requirements.

4. Where a Member State takes a decision on an application for long-term mobility, the provisions of Articles 29 and 31 shall apply.

5. Where the students intend to carry out economic activities in the second Member State, Article 23 shall apply. ⊂

⊃ *Article 26F* ⊂

**⊃ Safeguards in case of students [and remunerated trainees] mobility ⊂** [265]

⊃ 1. [The host entity] shall inform the competent authorities of the second Member State of any modification which affects the conditions on which basis the mobility was allowed to take place.

2. Where the second Member State:

(a) has not been notified in accordance with Article 26D (2) and (3) and requires such notification;

(b) has objected to the mobility in accordance with Article 26D (6);

(c) has found that the student [or remunerated trainee] continues studies [or traineeship] in the second Member State although the conditions laid down in Article 26E (2) (c) are no longer complied with;

(d) has rejected an application for mobility in accordance with Article 26E (3);

[265] **AT**: scrutiny reservation. **NL** reiterated for this article its comments on Article 26C as per the need of including sanctions. **PRES** said that it understands that delegations supporting **NL**'s comments for Article 26C support as well the same comments for this article.

(e) has found that the authorisation is used for purposes other than those for which it was issued;

(f) has found that the conditions on which the mobility was allowed to take place are no longer fulfilled,

it may request that:

i) the student [or remunerated trainee] shall cease all activity on its territory;

ii) the first Member State shall immediately allow re-entry of the student [or remunerated trainee] without formalities. This shall also apply if the authorisation issued by the first Member State has expired or has been withdrawn during the period of mobility within the second Member State.

3. In case the first Member State withdraws the authorisation it shall inform the authorities of the second Member State immediately. ⊂

*Article 27*

⊃ […] ⊂[266]

[266] **ES** asked why Article 27 was deleted to which **PRES** answered that in its proposal the mobility scheme applies to all programmes, not being necessary therefore having specific conditions for Union programmes including mobility measures.

*Article 28*

**Residence in the second Member State for ➲ researchers' ⊂ family members**[267]

1. When a researcher moves to a second Member State in accordance with Articles 26 ➲ A ⊂ and ➲ […] ⊂ ➲ 26B ⊂ , and when the family was already constituted in the first Member State, the members of his family shall be authorised to accompany or join him. [268]

2. No later than one month after entering the territory of the second Member State, the family members concerned or the researcher, in accordance with national law, shall submit an application for a residence permit as a family member to the competent authorities of that Member State.

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267 **AT, DE**: scrutiny reservation.

268 **AT** stated that the inclusion of short-term mobility in paragraph 1 appears incomprehensible since short-term mobility is already regulated by the Schengen *acquis*. **AT** requested for paragraphs 1 and 2 an adaptation to the wording of other Directives in the area of migration, for example the Blue Card Directive. In particular, instead of referring to "researcher" it should be referred to "*a holder of an authorisation for researchers based on this Directive*". Moreover, in line with Articles 26 and 27, the mention to "moving" to a second Member State should be changed to "*settling*" in a second Member State. In addition, **AT, SE** requested the modification of this paragraph by including a provision that allows the 2nd Member State to refuse the stay in its territory of family members of researchers if such family members represent a possible threat to public policy, public security or public health. The current wording does not make this possible.

In cases where the residence permit of the family members issued by the first Member State expires during the procedure or no longer entitles the holder to reside legally on the territory of the second Member State, Member States shall allow the person to stay in their territory, if necessary by issuing national temporary residence permits, or equivalent authorisations, allowing the applicant to continue to stay legally on their territory with the researcher until a decision on the application has been taken by the competent authorities of the second Member State.[269]

3. The second Member State may require the family members concerned to present with their application for a residence permit:[270]

(a) their residence permit in the first Member State and a valid travel document, or their certified copies, as well as a visa, if required;

(b) evidence that they have resided as members of the family of the researcher in the first Member State;

(c) evidence that they have a sickness insurance covering all risks in the second Member State, or that the researcher has such insurance for them.[271]

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269 **SE** requested the inclusion of a reference for the return of family members to the first Member State.

270 **AT, NL, SE, DE** requested the inclusion of a reference to the possibility to check whether there is a threat to public order and public safety. **AT** also pointed out that this lack of reference to the threat to public order and public safety was criticized in the Blue Card Directive and **CION**, according to **AT**, declared that this missing reference in that directive was a mistake. Therefore, **AT** stated that the possibility of including such a provision in this proposal should not be missed again. **FR, AT, DE** wanted to be able to control access by the family members to the labour market of the second Member State in order to minimise risks of social dumping. **AT** also pointed out that the permit of stay of the family member should correspond with the duration of the residence title of the researcher.

271 **CZ** suggested to include medical repatriation costs.

4. The second Member State may require the researcher to provide evidence that the holder:

(a) has an accommodation regarded as normal for a comparable family in the same region and which meets the general health and safety standards in the Member State concerned;

(b) has ➲ […] ➲ ➲ sufficient resources to cover subsistence of his/her and of his/her family members ➲ without recourse to the social assistance ➲ system ➲ of the Member State concerned.[272]

Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum national wages and pensions as well as the number of family members.

➲ 5. Derogations contained in Article 25 shall continue to apply *mutatis mutandis*.

6. Where the family was not already constituted in the first Member State, Article 25 shall apply. ➲[273]

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272 **AT** pointed out that this point needs to be adapted to the Blue Card Directive and that it lacks a reference to Article 25 for cases where the family had not already had existed in the first Member State.

273 **AT** was of the opinion that newly added paragraph 5 and 6 are not necessary since the residence in the 2nd Member State is temporary, being the work carried out in the 1st Member State the most important. **SE** wondered whether Article 6 should not also be mentioned in these two paragraphs since it seems that Article 6 applies to all categories of this proposal. **PRES** clarified that Article 25 deals with exceptions of the family reunification directive while Article 6 regulates researchers but not family members.

↓ 2005/71/EC (adapted)

## ~~CHAPTER V~~

## ~~PROCEDURE AND TRANSPARENCY~~

*~~Article 14~~*

### ~~Applications for admission~~

~~1. Member States shall determine whether applications for residence permits are to be made by the researcher or by the research organisation concerned.~~

~~2. The application shall be considered and examined when the third-country national concerned is residing outside the territory of the Member States to which he/she wishes to be admitted.~~

~~3. Member States may accept, in accordance with their national legislation, an application submitted when the third-country national concerned is already in their territory.~~

~~4. The Member State concerned shall grant the third-country national who has submitted an application and who meets the conditions of Articles 6 and 7 every facility to obtain the requisite visas.~~

~~*Article 15*~~

~~**Procedural safeguards**~~

~~1. The competent authorities of the Member States shall adopt a decision on the complete application as soon as possible and, where appropriate, provide for accelerated procedures.~~

~~2. If the information supplied in support of the application is inadequate, the consideration of the application may be suspended and the competent authorities shall inform the applicant of any further information they need.~~

~~3. Any decision rejecting an application for a residence permit shall be notified to the third-country national concerned in accordance with the notification procedures under the relevant national legislation. The notification shall specify the possible redress procedures available and the time limit for taking action.~~

~~4. Where an application is rejected, or a residence permit, issued in accordance with this Directive, is withdrawn, the person concerned shall have the right to mount a legal challenge before the authorities of the Member State concerned.~~

↓ 2004/114/EC (adapted)

# CHAPTER ~~V~~ VII

# PROCEDURE AND TRANSPARENCY

*Article ~~18~~ 29*

**Procedural guarantees and transparency**[274]

~~1. A decision on an application to obtain or renew a residence permit shall be adopted, and the applicant shall be notified of it, within a period that does not hamper the pursuit of the relevant studies, whilst leaving the competent authorities sufficient time to process the application.~~

274 **AT, EE, SI, DE**: scrutiny reservation. **DE** and **SE** pointed out that there was a linguistic problem in their respective versions of the text. **EL** pointed out that in the current proposal problems with procedural safeguards remain. Therefore, according to **EL,** provisions on procedural guarantees and transparency rules should be improved, inter alia, through: (a) coherence of the timeframe for processing an application in the framework of this proposal with the respective timeframes provided by other Directives on legal migration (e.g. Blue Card), (b) safeguarding the right of member States to regulate the volumes of admission of third-country nationals, especially in the cases they have limited or full access to the labour market of the Member State concerned, (c) introducing provisions related to the terms and conditions of admission that are already applied in some member States, thus eliminating the need of parallel national schemes, (d) examining the adoption of a common language level as a criterion for all Member States for those groups of third-country nationals that should prove, as a condition of admission, a sufficient knowledge of language, (e) granting rights to the various groups covered by this proposal based on the type of each category of third-country nationals (as determined by the purpose and the duration of stay in the member State) and (f) providing for effective, proportionate and dissuasive sanctions on employers in cases they violate the terms and conditions of employment, on the one hand, and sanctions and measures on third-country nationals, who infringe their status or the purpose of residence, on the other hand.

⇩ new

➲ Council

1. The competent authorities of the Member States shall decide on the complete application for an authorisation and shall notify the applicant in writing, in accordance with the notification procedures laid down in the national law of the Member State concerned, as soon as possible and at the latest within ➲ […] ➲ ➲ 90 ➲ days from the date on which the application was lodged ➲ […] ➲.[275]

➲ 1a. By way of derogation from paragraph 1, in case the application is submitted by an approved host entity or an approved agent, as referred to in Article 6a, the time for taking a decision on the complete application shall be at most 45 days. Member States may approve research organisations for the same purpose. ➲

275 **HU, ES** wanted to shorten this deadline. **HU** has 21 days in its national legislation. **PRES** explained that 90 days is the longest period but Member States can shorten this period if they want to. **ES** asked why do not longer distinguish between time-limits like the original **CION** proposal. In case the distinction between time-limits is maintained, **SI** could agree with a shorter deadline than 30 days in the case of Union programmes including mobility measures, but it would like to include the possibility of extending this deadline if need it, for example, in the event of complex cases. **PRES** explained that previously delegations had expressed concerns about the administrative burden that two types of time-limits may entail and accordingly decided to suggest just one time-limit. **CION** stated that 90 days is too long and that it would like to maintain the time limits shorter as originally proposed since they are more in line with the needs of the categories concerned. Since the needs are different the different time limits are justified.

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|---|
| ↓ 2004/114/EC (adapted)<br>⇨ new<br>➲ Council |

2. If the information supplied in support of the application is ➲ […] ➲ incomplete[276] ➲ , ~~processing of the application may be suspended and~~ the competent authorities shall[277] inform the applicant of any further information they need ⇨ and indicate a reasonable deadline[278] to complete the application. The period referred to in paragraph 1 shall be suspended until the authorities have received the additional information ➲ or documents ➲ required ➲. If additional information or documents have not been provided within the deadline, the application may be refused ➲ ⇦ .

3. Any decision ➲ […] ➲ ➲ refusing ➲ an application for ~~a residence permit~~ ⌦ an authorisation ⌫ ➲ declaring it inadmissible, as well as any decision withdrawing the authorisation ➲ shall be notified to the third-country national concerned in accordance with the notification procedures provided for under the relevant national legislation. The notification shall specify the possible redress procedures available, ⌦ the national court or authority with which the person concerned may lodge an appeal ⌫ and the time limit for taking action.[279]

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276 **AT** did not agree with changes in this paragraph. In particular it preferred to use another term such as "*inappropriate*" instead of "incomplete". **AT** stated that it preferred to get back to the previous wording of paragraph 2.

277 **EE** preferred a "may" clause instead of shall.

278 **LU** asked **CION** what it means by "reasonable deadline". **CION** answered that it introduced this wording since it is the same wording used in other migration instruments.

279 In response to **DE**, **CION** clarified that the procedural safeguards also cover mobility decisions, where a new application is submitted.

4. Where an application is ➲ […] ➲ refused or declared inadmissible ➲ or ~~a residence permit~~⌦ an authorisation ⌫ issued in accordance with this Directive is withdrawn, the person concerned shall have the right to mount a legal challenge before the authorities of the Member State concerned.[280]

~~*Article 19*~~

~~**Fast-track procedure for issuing residence permits or visas to students and school pupils**~~

~~An agreement on the establishment of a fast-track admission procedure allowing residence permits or visas to be issued in the name of the third-country national concerned may be concluded between the authority of a Member State with responsibility for the entry and residence of students or school pupils who are third-country nationals and an establishment of higher education or an organisation operating pupil exchange schemes which has been recognised for this purpose by the Member State concerned in accordance with its national legislation or administrative practice.~~

280 **AT, DE** were of the opinion that paragraphs 3 and 4 need to be more consistent with other directives in this field and therefore they suggested that they need to be re-drafted. **DE** mentioned that the wording in this paragraph should be accurate enough so not to leave the possibility of "*a contratrio*" interpretation.

⇩ new

➲ Council

*Article 30*

**Transparency and access to information**[281]

Member States shall make available information on entry and residence conditions for third-country nationals falling under the scope of this Directive, including ➲ , where appropriate, ⇦ the ➲ […] ⇦ monthly ➲ sufficient ⇦ resources required, rights, all documentary evidence needed for an application and the applicable fees. Member States shall make available information on the research organisations[282] approved under Article 8.[283]

281 **PL** was of the opinion that it would be difficult to make available the information requested by this article due to the heterogeneity of the groups targeted by this proposal.

282 **FR, ES** pointed out that, for the sake of consistency, "research organisations" should be changed as it has been throughout the text.

283 **PL** pointed out that while in this article the provisions are mandatory, the related provisions in Article 6 are optional.

| |
|---|
| ↓ 2004/114/EC<br>⇨ new<br>➲ Council |

*Article ~~20~~ 31*

**Fees**

Member States may require applicants to pay fees for the ➲ […] ⊂ ➲ handling[284] ⊂ of applications in accordance with this Directive. ⇨ The ➲ level of such fees shall not be disproportionate or excessive. ➲ […] ⊂ ⇦ [285]

| |
|---|
| ↓ 2005/71/EC (adapted) |

## ~~CHAPTER VI~~

## ~~FINAL PROVISIONS~~

284 **AT**: scrutiny reservation.

285 **EL** believed that this provision on fees should be in line with the relevant provision of the Single Permit Directive. **FR** asked what the fees cover exactly and **CION** answered that the fees cover any administrative costs related to any part of the processing of the application, including fees charged by universities. **AT** also asked whether this concerns the fees for the application or the fees for the handling of the application. According to **AT**, they are different types of fees. **CION** answered that it needs to check the wording, but it does not think that there is a difference intended in the wording.

~~*Article 16*~~

~~**Reports**~~

~~Periodically, and for the first time no later than three years after the entry into force of this Directive, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose any amendments that are necessary.~~

~~*Article 17*~~

~~**Transposition**~~

~~1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 12 October 2007.~~

~~When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.~~

~~2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.~~

~~*Article 18*~~

~~**Transitional provision**~~

~~By way of derogation from the provisions set out in Chapter III, Member States shall not be obliged to issue permits in accordance with this Directive in the form of a residence permit for a period of up to two years, after the date referred to in Article 17(1).~~

~~*Article 19*~~

~~**Common Travel Area**~~

~~Nothing in this Directive shall affect the right of Ireland to maintain the Common Travel Area arrangements referred to in the Protocol, annexed by the Treaty of Amsterdam to the Treaty on European Union and the Treaty establishing the European Community, on the application of certain aspects of Article 14 of the Treaty establishing the European Community to the United Kingdom and Ireland.~~

~~*Article 20*~~

~~**Entry into force**~~

~~This Directive shall enter into force on the twentieth day following its publication in the *Official Journal of the European Union*.~~

~~*Article 21*~~

~~**Addressees**~~

~~This Directive is addressed to the Member States in accordance with the Treaty establishing the European Community.~~

↓ 2004/114/EC

## CHAPTER ~~VI~~ VIII

## FINAL PROVISIONS

⇩ new
➲ Council

*Article 32*

➲ […] ➲ Cooperation on information ➲[286]

1. Member States shall appoint contact points which shall ➲ cooperate effectively and ➲ be responsible for receiving and transmitting the information needed to implement Articles ➲ […] ➲ 26A to 26F ➲ . ➲ Member States shall give preference to exchange of information via electronic means. ➲

2. ➲ Each ➲ Member States shall ➲ […] ➲ ➲ inform the other Member States, via the national contact points referred to in paragraph 1, about the procedures applied to admission and mobility referred to in Articles 6a, 9, 26A to 26F. ➲

[286] **AT**: scrutiny reservation.

*Article 33*

**Statistics**[287]

Annually, and the first time no later than [ ] Member States shall, in accordance with Regulation (EC) No 862/2007 of the European Parliament and of the Council[288], communicate to the Commission statistics on the volumes of third-country nationals who have been granted authorisations. In addition, and as far as possible, statistics shall be communicated to the Commission on volumes of third-country nationals whose authorisations have been renewed or withdrawn, during the previous calendar year, indicating their citizenship. Statistics on the admitted family members of researchers shall be communicated in the same manner.

The statistics referred to in paragraph 1 shall relate to reference periods of one calendar year and shall be supplied to the Commission within six months of the end of the reference year. The first reference year shal be […]

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[287] **AT**: scrutiny reservation. **AT** stated that the period for communicating statistics should be in line with Eurostat periods. It also suggested to transmit to **CION** data on authorisations to take up employment.

[288] OJ L 199, 31.7.2007, p. 23.

| |
|---|
| ↓ 2004/114/EC (adapted) |
| ⇨ new |
| ➲ Council |

*Article ~~21~~ 34*

**Reporting**[289]

Periodically, and for the first time by ⌦ [five years after the date of transposition of this Directive] ⌫ ~~12 January 2010~~, the Commission shall ⇨ ➲ […] ➲ ⇦ report to the European Parliament and the Council on the application of this Directive in the Member States and propose amendments if appropriate.

~~*Article 22*~~

~~Transposition~~

~~Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 12 January 2007 They shall forthwith inform the Commission thereof.~~

~~When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.~~

[289] **AT**: scrutiny reservation.

~~*Article 23*~~

~~**Transitional provision**~~

~~By way of derogation from the provisions set out in Chapter III and for a period of up to two years after the date set out in Article 22, Member States are not obliged to issue permits in accordance with this Directive in the form of a residence permit.~~

~~*Article 24*~~

~~**Time limits**~~

~~Without prejudice to the second subparagraph of Article 4(2) of Directive 2003/109/EC, Member States shall not be obliged to take into account the time during which the student, exchange pupil, unremunerated trainee or volunteer has resided as such in their territory for the purpose of granting further rights under national law to the third-country nationals concerned.~~

~~*Article 25*~~

~~**Entry into force**~~

~~This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.~~

↓

➲ Council

*Article 35*

**Transposition**[290]

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [two years[291] after the entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

   When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the directives repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

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290 **LV** referred to the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, which stipulates that Member States undertakes to accompany, in justified cases, the notification of their transposition measures. Recital 40 of this proposal, in its final sentence, says that "with regard to this Directive, the legislator considers the transmission of such documents to be justified". **LV** pointed out that the legislator has not yet made the corresponding assessment, therefore the statement regarding transmission of relevant documents as justified is premature.

291 **SE** and **FI** preferred a deadline for transposition of 3 years.

*Article 36*

**Repeal**[292]

Directives 2005/71/EC and 2004/114/EC are repealed ➲ for the Member States bound by this Directive ➲ with effect from [*day after the date set out in the first subparagraph of Article 35(1) of this Directive*], without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex I, Part B.

➲ For the Member States bound by this Directive, ➲ references to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex II.

*Article 37*

**Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union.*

[292] Please note that the amendment of Recital 43 is linked with this article.

↓ 2004/114/EC (adapted)

*Article ~~26~~ 38*

***Addressees***

This Directive is addressed to the Member States in accordance with the ~~Treaty establishing the European Community~~ ⌦ Treaties ⌫.

Done at Brussels,

| | |
|---|---|
| *For the European Parliament* | *For the Council* |
| *The President* | *The President* |

**ANNEX I**

↑

**Part A**

**Repealed Directive with list of its successive amendments**

(referred to in Article 37)

| | |
|---|---|
| Directive 2004/114EC of the European Parliament and of the Council | (OJ L 375, 23.12.2004, p. 12) |
| Directive 2005/71/EC of the European Parliament and of the Council | (OJ L 289, 03.11.2005, p. 15) |

**Part B**

**List of time-limits for transposition into national law [and application]**

(referred to in Article 36)

| Directive | Time-limit for transposition | Date of application |
|---|---|---|
| 2004/114/EC | 12.01.2007 | |
| 2005/71/EC | 12.10.2007 | |

## ANNEX II

### CORRELATION TABLE

| Directive 2004/114/EC | Directive 2005/71/EEC | This Directive |
|---|---|---|
| Article 1 (a) | | Article 1 (a) |
| Article 1 (b) | | - |
| - | | Article 1 (b) and (c) |
| Article 2 introductory wording | | Article 3 introductory wording |
| Article 2 (a) | | Article 3 (a) |
| Article 2 (b) | | Article 3 (c) |
| Article 2 (c) | | Article 3 (d) |
| Article 2 (d) | | Article 3 (e) |
| - | | Article 3 (f) and (g) |
| Article 2 (e) | | Article 3 (l) |
| Article 2 (f) | | Article 3 (h) |
| Article 2 (g) | | - |
| - | | Article 3 (i) |
| - | | Article 3 (m) to (s) |

| | | |
|---|---|---|
| Article 3 (1) | | Article 2 (1) |
| Article 3 (2) | | Article 2 (2) (a) to (e) |
| - | | Article 2 (2) (f) and (g) |
| Article 4 | | Article 4 |
| Article 5 | | Article 5 (1) |
| - | | Article 5 (2) |
| Article 6 (1) | | Article 6 (a) to (e) |
| - | | Article 6 (f) |
| Article 6 (2) | | - |
| - | | Article 7 |
| Article 7 (1) introductory wording | | Article 10 (1) introductory wording |
| Article 7 (1) (a) | | Article 10 (1) (a) |
| Article 7 (1) (b) and (c) | | - |
| Article 7 (1) (d) | | Article 10 (1) (b) |
| Article 7 (2) | | Article 10 (2) |
| - | | Article 10 (3) |
| Article 8 | | - |

| | | |
|---|---|---|
| - | | Article 11 |
| Article 9 (1) and (2) | | Article 12 (1) and (2) |
| Article 10 introductory wording | | Article 13 (1) introductory wording |
| Article 10 (a) | | Article 13 (1) (a) |
| Article 10 (b) and (c) | | - |
| - | | Article 12 (1) (b) |
| - | | Article 12 (2) |
| Article 11 introductory wording | | Article 14 (1) introductory wording |
| Article 11 (a) | | - |
| Article 11 (b) | | Article 13 (1) (a) |
| Article 11 (c) | | Article 13 (1) (b) |
| Article 11 (d) | | Article 13 (1) (c) |
| Articles 12 to 15 | | - |
| - | | Articles 14, 15 and 16 |
| Article 16 (1) | | Article 20 (1) introductory wording |
| - | | Article 20 (1) (a) to (c) |

| | | |
|---|---|---|
| Article 16 (2) | | Article 20 (2) |
| - | | Article 21 |
| Article 17 (1) first subparagraph | | Article 23 (1) |
| Article 17 (1) second subparagraph | | Article 23 (2) |
| Article 17 (2) | | Article 23 (3) |
| Article 17 (3) | | - |
| Article 17 (4) | | Article 23 (4) |
| - | | Articles 15, 24, 25, 27 |
| - | | Article 17 |
| Article 18 (1) | | - |
| - | | Article 29 (1) |
| Article 18 (2), (3) and (4) | | Article 29 (2), (3) and (4) |
| Article 19 | | - |
| - | | Article 30 |
| Article 20 | | Article 31 |
| - | | Articles 32 and 33 |

| | | |
|---|---|---|
| Article 21 | | Article 34 |
| Articles 22 to 25 | | - |
| - | | Articles 35, 36 and 37 |
| Article 26 | | Article 38 |
| - | | Annexes I and II |
| | Article 1 | - |
| | Article 2 introductory wording | - |
| | Article 2 (a) | Article 3 (a) |
| | Article 2 (b) | Article 3 (i) |
| | Article 2 (c) | Article 3 (k) |
| | Article 2 (d) | Article 3 (b) |
| | Article 2 (e) | - |
| | Articles 3 and 4 | - |
| | Article 5 | Article 8 |
| | Article 6 (1) | Article 9 (1) |
| | - | Article 9 (1) (a) to (f) |
| | Article 6 (2) (a) | Article 9 (2) (a) |
| | Article 6 (2) (a), (b) and (c) | - |

| | | |
|---|---|---|
| | Article 6 (3), (4) and (5) | Article 9 (3), (4) and (5) |
| | Article 7 | - |
| | Article 8 | Article 16 (1) |
| | Article 9 | - |
| | Article 10 (1) | Article 19 (2) (a) |
| | - | Article 19 (2) (b) |
| | Article 10 (2) | - |
| | Article 11 (1) and (2) | Article 22 |
| | Article 12 introductory wording | - |
| | Article 12 (a) | - |
| | Article 12 (b) | - |
| | Article 12 (c) | Article 21 (1) |
| | Article 12 (d) | - |
| | Article 12 (e) | - |
| | - | Article 21 (2) |
| | Article 13 (1) | Article 26 (1) |
| | Article 13 (2) | Article 26 (1) |

| | | |
|---|---|---|
| | Article 13 (3) and (5) | Article 26 (1) |
| | Article 13 (4) | - |
| | - | Article 26 (2), (3) and (4) |
| | Articles 14 to 21 | - |